UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
10-CR-19 (JG)

-against- United States Courthouse

: Brooklyn, New York

ADIS MEDUNJANIN,

Defendant.

: April 26, 2012
9:00 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE , and a jury.

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Proceedings recorded by mechanical stenography, transcript produced by CAT.

(In open court.)

(Judge JOHN GLEESON enters the courtroom.)

THE COURTROOM DEPUTY: All rise.

THE COURT: You can be seated in the back, thank you.

Good morning.

ALL: Good morning, Your Honor.

(Defendant enters the courtroom.)

THE COURT: Good morning.

Does anybody want to be heard with regard to the draft charge? Let me share with you a couple of second thoughts I've had about how it's arranged.

I think I probably ought to move the aiding and abetting charge, maybe do it generally up front. And then, specifically in connection with each offense to which it's applicable, just refer the jury to the instructions I've already given them regarding aiding and abetting.

Secondly, I'm having second thoughts about the Pinkerton charge. I put it in here because it was requested and the law provides for it in some circumstances. I'm not sure it's appropriate here, but I'll hear you on that. Obviously, the Government would like it.

So, who has comments, objections, suggestions, compliments, congratulations?

MR. LOONAM: Our comments first.

MR. BITKOWER: Those are implied, Your Honor.

MR. GOTTLIEB: We, too.

THE COURT: Great, right. Now that we've got those out of the way, let's get to the objections.

MR. BITKOWER: On the Pinkerton matter, Your Honor, is there a particular reason why Your Honor is having second thoughts?

THE COURT: Explain to me Counts 8 and 9, what they're based on. Let me get the charges in front of me. Are we on (S-4)?

MR. BITKOWER: Yes, Your Honor.

THE COURT: Are the counts different?

MR. BITKOWER: The count numbering, there's one count that's not charged to the defendant.

THE COURT: Okay.

MR. BITKOWER: There are actually two counts not charged to the defendant.

THE COURT: Okay. Count 8 is use of a firearm and destructive device and that's, the timing of that is September through January? Sorry, what's the number of Count 8 in (S-4), what we are we calling Count 8? Is it, in fact, Count 8?

MR. BITKOWER: That would be Count 9.

THE COURT: Count 9.

MR. BITKOWER: Yes, Your Honor.

THE COURT: I was trying to link up, as I was reading these, the discrete criminal activity that you allege that was based on; like, if the jury said what's this all about.

Is one of them the firing of the weapons in the training camp?

MR. BITKOWER: Roughly, Your Honor. The first 924(c) count relates to the firearms and destructive devices used at the training camp. That's held, possessed, handled, used. Not just fired.

THE COURT: Got it. And what's that second 924(c) count?

MR. BITKOWER: That's for the explosives. That's solely for explosives that Zazi was trained on and built in furtherance of the plot to explode bombs in the United States.

THE COURT: So, it's Zazi, his second trip back.

MR. BITKOWER: Both at the training camp in Waziristan, the explosives training camp, the second one.

THE COURT: Right.

MR. BITKOWER: As well as the second one, when he drove from Denver to New York. That's in furtherance of the conspiracy to kill abroad. And the military training, they held and possessed weapons at the first training camp. All three of them did.

THE COURT: Right.

MR. BITKOWER: In furtherance of the material support count, the conspiracy for material support count, the transnational borders counts, and the WMD count. They agreed that Zazi would attend training where he created, held, and blew up explosives and then, they agreed that he would build a bomb which, in fact, he did in Denver and drove to New York.

So, in our view, that's actually -- it's classic Pinkerton in that there is a substantive offense; he built bombs in furtherance, reasonably foreseeable and in furtherance, of their conspiratorial activity.

THE COURT: Okay. I've got it.

MS. CARVLIN: Judge, if I could be heard on that.

THE COURT: Yes.

MS. CARVLIN: In terms of Count 10, the time alleged in the indictment is September 2008 to April 2009.

THE COURT: And you know our record is going to be a mess on this because we've got different numbering.

Let's refer to them as they're referred to in the proposed charge, which I think is Count 9?

MS. CARVLIN: Okay, yes, that would be Count 9, Your Honor.

THE COURT: Yes. So, I'm having trouble with the numbering, too, but let's get all on the same page so our record is not a hash.

MS. CARVLIN: Count 9 in Your Honor's proposed charge, which the Government alleges the conduct occurred between September 2008 and April 2009. The actions that Mr. Najibullah Zazi supposedly took in terms of building, first of all, it was not a destructive device, it was a component of a destructive device. And that took place after April of 2009.

So, this conduct that's supposedly alleged in terms of Count 9 can only be the second training camp, and I believe the evidence was that Mr. Zazi was back in January of 2009.

THE COURT: That was actually, I don't mean -- I do mean to interrupt you, and forgive me -- that was a source of my confusion now that I'm oriented to the correct number of the Count in the indictment. It's that November 2008 to September 2009.

Was that the timing for this second 924(c)?

MR. BITKOWER: Yes, Your Honor. Najibullah Zazi testified that when he attended the explosive training camp it was after the presidential election; That is, Obama had been elected, but not taken office.

THE COURT: Right.

MR. BITKOWER: So, that would have been approximately November of 2008 and that carried through until he actually built the detonator explosive which Dr. Yaeger testified is a primary explosive.

THE COURT: So, this embraces in time the building of the detonator out in --

MR. BITKOWER: Exactly.

THE COURT: I'm sorry, Ms. Carvlin, go ahead.

MS. CARVLIN: Then that would be Count 11 in the indictment; is that correct?

MR. BITKOWER: Yes.

MS. CARVLIN: So, Count 10 in the indictment doesn't charge Mr. Medunjanin.

MR. BITKOWER: Correct.

MS. CARVLIN: So, I'm trying to correspond that with your counts, Your Honor.

So, Count 9 would be Count 11 in the indictment.

THE COURT: Right? Is that right?

MR. BITKOWER: Yes.

MS. CARVLIN: Okay, the other thing is just in terms of charging the jury, Mr. Medunjanin is not charged in Count 6. He's charged with being a participant, but he's not alleged to be a defendant in Count 6.

MR. BITKOWER: Of the indictment.

MS. CARVLIN: Of the indictment.

And yes, Count 9 of the indictment which I guess is Count 11 of the -- I'm sorry, yes, which is Count 10.

THE COURT: Sorry, this may be purely idiosyncratic, but I need to have this straight. Let's walk through and make sure our record reflects the numbering of what we're telling the jury what the numbers of the counts are as compared to what's in (S-4).

I take it one is one?

MR. BITKOWER: Yes.

THE COURT: And one through five are, also?

MR. BITKOWER: Yes.

THE COURT: Where do we stray from the numbers in the indictment?

MR. BITKOWER: Count 6, Your Honor, of the indictment does not charge the defendant. So, we have moved Counts 7, 8, and 9 of the superseding indictment each up one number.

THE COURT: Got it.

MR. BITKOWER: So, 6, 7, and 8 of the charge.

THE COURT: Okay.

MR. BITKOWER: And again, Count 10 of the superseding indictment does not charge the defendant. So, we have moved Count 11 of the indictment up two numbers to Count 9 of the charge.

THE COURT: All right. So, what we have in the charge is Counts 6, 7 and 8 are really 7, 8, and 9, respectively in (S-4).

And Count 9 in your charge is Count 11 in (S-4).

MR. BITKOWER: Yes.

THE COURT: This becomes, by the way, I found out from experience, a horror-show when it comes to judgments and the like; but I agree that you should give them consecutively-numbered counts and not let them think that there were other counts previously against Mr. Medunjanin.

MS. CARVLIN: I think my argument, though, with respect to what's Count 8 in the charge and Count 9 in the indictment, is that Count 9 in the indictment, Count eight in the charge, makes reference to Count 6 as an underlying charge for the 924(c), and Mr. Medunjanin is not charged in Count 6.

So, it's a defect in the indictment and the jury should not be charged.

THE COURT: Okay. Where is that in the proposed charge?

MR. BITKOWER: Your Honor, that's a count that's already accounted for.

THE COURT: Where is it in the proposed charge?

MR. BITKOWER: Page 22.

THE COURT: Which refers to Counts 2 and 5.

MR. BITKOWER: Correct. And it would refer to Count 6 had Ferid Imam been present in court, but since he is not, because Ferid Imam, for example, is not in court the Court has removed from its charge any reference to Count 6 in which the defendant is not charged.

THE COURT: All right, does that allay your concern?

MS. CARVLIN: Except that in Count 9 on page 24.

Count 6 is still alleged.

THE COURT: But that refers to our enumeration of Count 6.

MS. CARVLIN: Okay.

THE COURT: Which is really Count 7 in the indictment.

MS. CARVLIN: Got it, thank you. Yes, it does account for that.

THE COURT: It's a good thing we re-numbered these Counts or we'd hardly have anything to talk about.

MS. CARVLIN: Well, we do have a few things to talk about.

THE COURT: I'm sure you do.

MS. CARVLIN: I don't know about the Government but, Judge, we have three charges, and I will hand up a copy to the Court, if I may. And I've provided a copy to the Government.

THE COURT: Okay, you can hand them to Julia.

(Handing.)

THE COURT: Thank you.

MS. CARVLIN: And this also corresponds to an objection we have to the charge.

There is a point in the charge where Your Honor says on page 9: The Government is not required to prove that a defendant is aware of the law that actually forbids his comment.

And I think in this case, Counts 3 and 4 charge that Mr. Medunjanin provided material support and conspired to provide material support, respectively.

I would ask that Your Honor charge that: The law does not prohibit being a member of a designated group or vigorously promoting and supporting the political goals of a designated organization. What is prohibited the act of giving material support. Mere association with such a group is not enough.

I think that's somewhat inconsistent because in this case I think there are particular knowledge requirements. So, I would ask you to give that charge and also omit the line on page 9 I referenced previously.

THE COURT: And this refers to the first of the three of the proposed charges. These other two are a separate issue.

MS. CARVLIN: The other two are general.

THE COURT: Okay. So, it's where you have Counts 3 and 4 charged respectively, this is the insert you're talking about?

MS. CARVLIN: Yes.

THE COURT: Okay. Let's talk about it.

I'm not getting the link between what you propose and this general principle that the Government has to prove the defendant's awareness of the law that forbids his conduct.

MS. CARVLIN: Well, you do charge later in the charge that the defendant has to know it was a designated foreign terrorist organization.

THE COURT: Right, but that doesn't mean he needs to be aware of the law that prohibits the conduct.

MS. CARVLIN: My concern is that saying you don't have to be aware of the law that prohibits the conduct is, in general I think that's true, but there are certain statutes and I think this is one of them, that has a particular knowledge requirement. In this case the particular knowledge requirement is that the defendant must know that it's a designated foreign terrorist organization.

THE COURT: Fair enough. But that's knowledge of a fact as distinct, you know, the niches in which the defendant has to be specifically aware of the law that his conduct prohibits are those willfully laws, like tax laws and structuring laws. Malum prohibitum-type laws.

Here, I think you're right; he has to -- at least, if the Government thinks otherwise it will tell me -- but the knowledge of the fact of Al-Qaeda being a designated terrorism organization is something that has to be proved; but that's a fact, not a law. Anyway, I get the point.

MS. CARVLIN: Okay.

THE COURT: In terms of your specific instruction, it just strikes me as and this might be fixable, but it seems confusing to say to the jury on the one hand, the law doesn't prohibit promoting and supporting an organization here, presumably Al-Qaeda. What is prohibited is the act of giving material support -- I'm paraphrasing -- but that seems confusing to me. It does prohibit support if it's material.

MS. CARVLIN: It's a quote from Holder versus Humanitarian Law Project, Supreme Court case in 2010, 130 Supreme Court 2705. I don't have the jump site, Your Honor, but I'm sure I can find it. And that was the Supreme Court quoting, approvingly, language that the Ninth Circuit had used.

So, I don't object to cleaning up the language, but I think that's the essence of what the jury has to be told, and I think that's highly significant in this case given the testimony and evidence about materials that were found in Mr. Medunjanin's bedroom, and I think the jury really needs to understand that you can be in favor of Al-Qaeda and embrace the goals of Al-Qaeda and not be guilty of these charges.

THE COURT: Do you have a copy of that case?

MS. CARVLIN: I have a copy of my, of the portion. I can hand it up to the Court.

MR. BITKOWER: Ms. Carvlin.

(Pause in the proceedings.)

MS. CARVLIN: I apologize, I should have printed it.

THE COURT: That's all right.

Let me hear from the Government and see if we have a word-smithing problem or something else.

MR. LOONAM: I hope it's the former, Your Honor.

We agree with the principle of law that merely believing the same thing as Al-Qaeda or even telling people that Al-Qaeda are good guys and that I hope they win would not be illegal. I think there's two problems with the proposed language.

One is that the law does, as the Court stated, prohibit supporting Al-Qaeda if it's done in coordination with Al-Qaeda. That is, their independent advocacy is legal as the Holder v Humanitarian Law case stated. But that case also stated that advocacy done in coordination with the group designed to support its goals is illegal.

So, if we could -- I believe Ms. Carvlin actually said it colloquially in a way that's accurate, which is the law does not prohibit believing in the same things as Al-Qaeda and the law does not prohibit independently supporting the goals of Al-Qaeda. The law does not prohibit believing that Al-Qaeda is correct. But the law does prohibit, what this instruction seems to say is not prohibitive, which is to support Al-Qaeda in a certain sense and in certain ways.

The only other issue we have with the proposal -- again, I would agree with the principle of law that merely being a member of a designated organization is not illegal per se, but that's not the case we have here. That's not incorrect, it's just not applicable to the facts we have here. There has no testimony one way or the other about his membership in an organization and I fear that that sort of language is applicable to a case for example the Second Circuit's decision in Farhane of just this past year, was a case where the defendant was alleged to have taken a membership oath and it was important to distinguish between mere membership and support.

This case is all about support. This case is not about a membership oath, membership ceremony, anything like that, and I fear that this sentence could be confusing simply because it's not applicable to our facts or the arguments.

THE COURT: No, I don't think the fact that the facts don't support that he became a member eliminates the illuminating effect of language like this. I mean, it's important for the jury to know what the law doesn't does and does not prohibit. So, I suggest that I tinker with the proposed charge as follows, beginning with: This law does not prohibit. I propose, and my changes are slight, ending the sentence with: Designated group.

So, it says: This law does not prohibit being a member of a designated group.

End that there.

And then say: Nor does it prohibit supporting the political goals of a designated organization.

We probably to use the same noun.

And then say: What is prohibited is the act of giving material support.

I think that embraces what you want me to convey to the jury.

MS. CARVLIN: It does.

THE COURT: All right.

Anything further on that? Do you like group or organization by the way, Ms. Carvlin?

MS. CARVLIN: Group.

THE COURT: Anything further, Mr. Bitkower?

MR. BITKOWER: I would prefer: Nor does it prohibit independently supporting.

Given that that's the actual legal distinction here. In some circumstances it does --

MS. CARVLIN: No, Judge, it prohibits providing material.

THE COURT: I don't want to confuse them with the words. Material support is what's prohibited. So, why don't we just change that verb: Nor does it prohibit --

MR. BITKOWER: I think advocating actually would be fine.

THE COURT: Advocating.

MS. CARVLIN: I object to that, Your Honor. I think it's broader than that. I can agree with their political agenda. I can support in my own mind or by speaking. I can go on the street corner and say: I think Al-Qaeda's right. And this law does not prohibit that.

THE COURT: Okay, I think we've reached the point of diminishing returns on this. I'm going to use the term advocating so as not to use the verb supporting in a way that I think is confusing.

Next.

MS. CARVLIN: We'd also ask that you give a voluntariness charge.

THE COURT: Yes.

MS. CARVLIN: I've provided a copy to the Government.

THE COURT: With respect to the statements?

MS. CARVLIN: Yes.

And I've provided the Court with one more proposed charge, which is broader than the one we just discussed, and that is: The defendant is not guilty of an offense merely because he associated with others engaged in the criminal activity.

THE COURT: I think that's reiterated already several times in the charge.

Don't you agree?

MS. CARVLIN: It is encompassed in other aspects of of the charge, I do agree. I just think given the particular allegations here, I would like the Court to emphasize that.

THE COURT: I think the charge very strongly admonishes the jury right at the outset. For example, saying he's not on trial for associating with or being friends people who have admitted to acts of terrorism.

So, I agree with the sentiment, but I think it's fairly incorporated on a repeated basis already in the charge.

Is there any objection to the voluntariness charge that's been proposed?

MR. LOONAM: Your Honor, there's no objection.

I would just note on the copy we were given I believe January 10th should be changed to January 8th, 2010.

THE COURT: Yes, it's been changed on the copy I've been given.

MR. LOONAM: All right, Your Honor, and I believe this is straight from Sand, so there's no objection.

We do believe that this voluntariness instruction should be within the context of an instruction that the Government submitted concerning the questioning of the defendant.

THE COURT: Oh, is that in today's letter?

MR. LOONAM: Yes, Your Honor.

THE COURT: They seem pretty reasonable to me. They will be close together in the final charge.

Do you have any objection to that charge, Ms. Carvlin?

MS. CARVLIN: No, that's fine.

THE COURT: So, I'll include them both in the appropriate spot.

There's also a search warrant and wire-tap evidence charge that is brief and is proposed by the Government. I see no problem with that.

Is there any objection to it?

MS. CARVLIN: No objection to that.

THE COURT: What else?

MS. CARVLIN: I'm wondering, Your Honor, in terms of the 924(c) counts, if Your Honor is going to give the jury a special verdict for the discharge and for the explosive device?

THE COURT: Yes, we'll need to because they're separate mandatory minimums.

MS. CARVLIN: Yes.

THE COURT: Agreed?

MR. BITKOWER: We agree that there should be a special verdict, yes.

THE COURT: All right, I'll give you a verdict sheet before the case goes to the jury and I'll hear you on it.

What else?

MS. CARVLIN: That's it from the defense, Your Honor.

THE COURT: Mr. Bitkower?

MR. BITKOWER: We would just ask that there be a charge that dates are approximate in the indictment.

THE COURT: Okay.

Any objection?

MS. CARVLIN: No, Your Honor.

THE COURT: What else?

MR. BITKOWER: And just a few typographical issues that we can take up with your law clerk, if you prefer.

THE COURT: That's fine.

Just so you know, if they demand it, I'll give them the charge, but I don't like to give juries the charge. I think it turns them into little lawyers and we've got enough lawyers here. So, I'll appreciate any corrections like that, but be assured the jury is not going to see this unless they ask for it and then I hear you on whether we send it in.

What else?

MR. BITKOWER: I apologize, I had one more proposal.

On page 10 of the current proposed charge -- I'm sorry make that two, although I don't think the second one is controversial.

On page 2, before the last line of the middle paragraph: That his associates pled guilty to some of the offenses for which the defendant is charged says nothing about whether the defendant himself is guilty of the crimes charged.

THE COURT: What page are you on?

MR. BITKOWER: Ten.

THE COURT: Yes, go ahead.

MR. BITKOWER: We would propose adding: Similarly, that his associates were not charged with all of the same offenses as the defendant says nothing about whether the defendant himself is guilty of the crimes charged.

THE COURT: Denied.

MS. CARVLIN: We obviously object to that, Your Honor.

THE COURT: I just ruled in your favor, do you want to talk me out of it?

MS. CARVLIN: No. I didn't even hear you, sorry.

THE COURT: All right.

What else?

MR. BITKOWER: Finally, Your Honor, on page 23.

THE COURT: Yes?

MR. BITKOWER: The definition of destructive device includes a lot of sub-parts. We're not relying on some of them and I think it could be confusing. So, for example rockets.

THE COURT: Where on 23?

MR. BITKOWER: The very bottom.

THE COURT: Okay.

MR. BITKOWER: A rocket with a propellant charge of four than four ounces, a missile with an incendiary --

THE COURT: These are things you want me to take out?

MR. BITKOWER: Yes.

THE COURT: Okay.

What else?

MR. BITKOWER: That's it.

THE COURT: You want the rocket and the missile?

MR. BITKOWER: Anything with a specific number of ounces, Your Honor.

THE COURT: Why don't I just say: A destructive device is defined to include any explosive, bomb or grenade.

MR. BITKOWER: Or similar device.

THE COURT: Okay.

What else?

MR. BITKOWER: Nothing from the Government.

THE COURT: Anything further from the defendant?

MS. CARVLIN: No, Your Honor.

THE COURT: All right.

(Pause in the proceedings.)

THE COURT: All right, good.

Who's summing up for the Government?

MS. BERGER: I am Your Honor.

THE COURT: All right.

And Mr. Gottlieb, you're going to sum up for the defendant?

MR. GOTTLIEB: Yes, Your Honor.

THE COURT: I'm going to go in, it's 9:30, our jurors should be here. Let's take about a ten-minute break.

What I want to do is, with your blessing, go in and tell the jury we're going to have summations. It looks like we've got plenty of time to complete them today, but in the event it goes a little late, I'm going to ask them to trade a day off tomorrow for staying late today, all right?

MS. CARVLIN: Yes.

THE COURT: Do I have your approval to do that?

ALL: Yes, Your Honor.

THE COURT: All right. And we'll resume in ten minutes.

MS. CARVLIN: Your Honor, just for the court's information as well, as I've already mentioned to the Government, we are not going to call any additional witnesses.

THE COURT: Oh, I forgot about your third witness.

MS. CARVLIN: Well, it turns out you were prescient, Your Honor.

THE COURT: I didn't mean to steamroll through the rest of your defense case. Please, forgive me.

MS. CARVLIN: No problem. You can just anticipate where we're going. We do have a stipulation to read, then we have to rest.

THE COURT: Then you have to rest.

MS. CARVLIN: And argue Rule 29.

THE COURT: Do you want to argue Rule 29 or do you want to do that post-verdict?

MS. CARVLIN: Post-verdict is find, but we preserve.

THE COURT: But they're deemed made when you rest.

MS. CARVLIN: Thank you.

THE COURT: I'm sorry, forgive me. I'm focusing on the charge and going ahead. I'm going to go in there and tell them to deliberate.

Yes?

MR. BITKOWER: Just as a technical point, we'll need few minutes to set up some A/V.

THE COURT: Why don't you set up now.

MR. BITKOWER: Okay.

THE COURT: When the jury comes back in I'll say, anything further?

You'll say the defense rests; right?

MS. CARVLIN: We have a stipulation to read and then we'll rest.

THE COURT: Right. A stipulation.

MR. GOTTLIEB: Were you up late working on a summation last night?

THE COURT: You'll do your stipulation and then rest.

There will be a springing denied-without-prejudice-to-renewal-of-Rule-29-motion at that point; unspoken but preserved.

And then, we'll sum up. All right?

MS. CARVLIN: Yes, Your Honor.

THE COURT: Okay. Don't let me forget your stipulation.

(Recess taken at 9:36 a.m.)

(The following occurred in the absence of the jury.)

MR. GOTTLIEB: May we approach?

THE COURT: Yes.

(Side bar.)

THE COURT: Yes, sir?

MR. GOTTLIEB: There was one other outstanding issue; that was, sleeping juror number ten.

THE COURT: Yes.

MR. GOTTLIEB: I would ask that she be excused.

MR. BITKOWER: We had understood she was on probation. So we would propose watching her. There are going to be some six hours of summations. If she can keep her eyes open for that, that is going to be more impressive than most of the people in the gallery.

MR. GOTTLIEB: It's not an issue of whether or not today, with the excitement that certainly Ms. Berger is going to provide, I am sure she is going to stay awake. The problem is for the last seven days she has been dozing. It is not enough just to be awake today.

THE COURT: Everybody dozes. But she's really been out a lot. So I am going to excuse her.

MR. GOTTLIEB: Thank you.

(In open court.)

THE COURT: All right. Are you ready?

MS. BERGER: Yes, sir it.

THE COURT: You are ready with the stipulation?

MS. CARVLIN: Yes.

(Jury present.)

THE COURT: Please be seated, everyone.

All right. Mr. Gottlieb, Mr. Dinnerstein, Ms. Carvlin, anything further from the defendant?

MS. CARVLIN: Yes, Your Honor.

If I may, I would like to read a stipulation please, Your Honor.

THE COURT: Yes.

MS. CARVLIN: Beginning on September 25, 2009, and continuing thereafter, Mr. Medunjanin was represented by legal counsel with respect to the government's investigation.

Throughout the representation, Mr. Medunjanin was in frequent contact with his attorney.

Mr. Medunjanin called his attorney on January 7, 2010, at 1:57 pm, Eastern Standard Time, shortly after members of law enforcement served a search warrant on Mr. Medunjanin at his home. The search warrant authorized the seizure of Mr. Medunjanin's passport. Mr. Medunjanin was unable to speak with his attorney, but left a message at his attorney's office stating that he needed to speak with his attorney as soon as possible.

At 2:24 pm, Eastern Standard Time, Mr. Medunjanin's attorney returned Mr. Medunjanin's call and spoke with

Mr. Medunjanin. During that conversation, Mr. Medunjanin told his attorney about the search warrant. Mr. Medunjanin also said he thought that the statute listed on the search warrant was a homicide statute.

It is further stipulated and agreed that this stipulation marked defense Exhibit F may be received in evidence as a defense exhibit.

We would offer defense Exhibit F, Your Honor.

THE COURT: Received.

(Marked.)

MS. CARVLIN: The defense rests, Your Honor.

THE COURT: All right. Thank you, Ms. Carvlin.

The government rests as well?

MS. BERGER: Yes, Your Honor.

THE COURT: All right. You have heard all the evidence in the case. Now it is time to move to the next phase, which is closing arguments or summations.

What you will hear now and for the rest of the day from the lawyers will not be evidence. You've already got all the evidence in the form of the testimony from this witness stand or by deposition, in the form of exhibits that I received in evidence. That's the evidentiary base for your verdicts. It can't be added to by these summations you are about to hear.

But just as I said with respect to the opening statements, the mere fact that what the attorneys tell you directly is not evidence doesn't mean it is not important. This is the lawyer's opportunity to argue to you what they believe the evidence proved, marshal the evidence, if they wish, attack it, if they wish, to argue to you the facts they believe have been proved and to argue to you the inferences they want you to draw or not draw from the facts that they claim have been proved or haven't been proved.

That's what we will spend the rest of the day on.

The government goes first. It bears the burden of proof. It bears the burden of proving guilt beyond a reasonable doubt. So you will hear from Ms. Berger in summation on behalf of the government.

Then the defendant has an opportunity, but again no obligation, to address you directly in summation. I am told that Mr. Gottlieb will address you on behalf of the defendant in summation.

And then the rules provide for a brief rebuttal summation by the prosecution, consistent with the fact that at all times the government bears the burden of proving guilt beyond a reasonable doubt. The government gets the last word.

All right. Are you ready, Ms. Berger?

MS. BERGER: Yes, Your Honor.

Thank you.

Good morning.

In the summer of 2008, the defendant, Adis Medunjanin, made a choice. Sitting outside a mosque in Queens with his two friends, Najibullah Zazi and Zarein Ahmedzay, the three men conspired to travel overseas to fight violent jihad. On this summer night, the three men made a covenant, or a promise, that they would travel to Afghanistan, join the Taliban, and kill American men and women serving our country in the military. They knew they might die and they were prepared to kill.

And then, several months later, the defendant made another choice. Sitting in an Al Qaeda training compound, senior Al Qaeda leaders asked him to do a mission on behalf of Al Qaeda. They asked him to return to the United States and conduct a suicide bombing attack right here in New York City. Once again, the defendant said yes.

Along with Najibullah and Zarein, the defendant agreed to take his own life and in the process to murder innocent Americans.

Finally, in January of 2010, when he realized that the jig was up, that the FBI knew exactly what he had been doing, the defendant made the choice to strike. Fulfilling that promise he had made to Al Qaeda, the defendant got in his car, sped on to the highway and tried to commit a final desperate act of jihad. While he did it he screamed into the phone, "We love death more than you love life."

Ladies and gentlemen, this case is about the choices that that man made, choices to murder American soldiers overseas, choices to come back and murder Americans here in New York, and to do this on behalf of Al Qaeda. So today the government is asking you to hold him accountable for those choices.

For these choices the defendant is charged with nine separate crimes. Over the last two weeks, you've heard evidence, seen witnesses come and testify, and all of this is proof beyond a reasonable doubt that the defendant is guilty of all nine of these crimes.

Ladies and gentlemen, it is my privilege to present the closing argument today. What I am going to do is try to summarize the evidence for you and show you how all of this evidence fits in the different counts in the indictment.

Ladies and gentlemen, all of this evidence is available for you to see. These good people (indicating) have been taking down every word that the witnesses have said. So if there are exhibits that you want to see, if there is a particular part of a witness' testimony that you want to hear, please, just ask for it.

As I mentioned earlier, the defendant is charged with committing nine crimes. Those nine crimes can roughly be divided into about three categories.

The first category are the crimes the defendant committed while he was still here in the United States, before he ever left for Pakistan.

The second crime is the ones that started in Pakistan; and, finally, the third category are the crimes that started in Pakistan and continued when the defendant returned to the United States.

The first category, the crimes the defendant committed before he ever left, when he was right here in the United States, the defendant is charged with conspiring, which just means agreeing, to travel to Afghanistan to kill US service men and women.

The second category, the crimes that occurred in Pakistan, the defendant is charged with receiving military training from Al Qaeda. He is charged with supporting Al Qaeda, and he is charged with holding and using weapons in connection with these crimes.

For the third category, crimes that continued when the defendant returned to the United States, the defendant is charged with agreeing to be a suicide bomber. He is charged with agreeing to strap explosives to his body and blow himself up.

The defendant is also charged with his last desperate act of jihad, for intentionally crashing his car on the Whitestone Expressway, trying to kill himself and others.

Let's review what the evidence has shown us over the last two weeks.

You have learned that in the summer of 2008, Najibullah, Zarein and the defendant had all become increasingly devout in their Muslim faith and increasingly radical in their political views. Zarein testified that in his view the American presence was an occupation, that it had to be fought and repelled.

Najibullah testified about the Taliban. The Taliban was fighting the country's liberation. Who was the Taliban fighting? They were fighting the United States.

Najibullah also testified about the defendant's view of America's presence in Afghanistan. The defendant's view is that America was oppressing Muslims. The defendant's view was that Muslims should fight and that it was their mandatory duty to fight America.

You learned that Najibullah, Zarein and the defendant all listened to lectures from radical Islamic scholars, scholars like Anwar al Awalki and Sheikh Faisal. Najibullah and Zarein both testified that it was the defendant that first introduced them to the lectures of Anwar al Awalki. Yesterday you actually got to listen to a part of one of Anwar Al Awalki's lectures, a lecture about jihad. This is a lecture that the defendant had in his own bedroom.

In that lecture you heard what Al Awalki said. He talked about the relationship between the Muslims and the people of the book, the Jews and Christians. He said that this should be a relationship of fighting, fight and slay the pagans, wherever you find them, and seize them, beleaguer them, and lie in wait for them in every stratagem of war. He said, when you see the word terrorist, replace it with mujahideen. Again, a lecture that was found on a CD in the defendant's own bedroom.

THE COURT: I'm sorry. Let me interrupt you for one second.

There is an overflow room because more people want to be here. They can't hear you. We are going to put a little microphone.

MS. BERGER: Certainly.

THE COURT: Sorry.

(Pause.)

Thank you, Ilene.

THE CLERK: You are welcome, Your Honor.

THE COURT: Please excuse the interruption.

MS. BERGER: Of course.

Ladies and gentlemen, you heard from Zakir Khan. You remember him, the young man that came in, testified that he was a friend of the defendant's from the mosque. And Zakir Khan testified that the defendant gave him lectures from Anwar Al Awalki and that they listened to the lectures from Al Awalki and other radicals, like Sheikh Faisal, together.

After spending countless hours talking about jihad, listening to lectures, watching videos what were put out by Al Qaeda, the defendant, Zarein and Najibullah decided that they needed to do more than just talk.

THE COURT: You can take it off. We will fix it for the benefit of the people in the other room. I don't mean to distract you in that way.

MS. BERGER: It is a little amplified.

THE COURT: Yes.

MS. BERGER: So one night, sitting outside of the Abu Bakr Mosque in Queens, the three men decided to take action. That night, they conspired or agreed to travel to Afghanistan, to join the Taliban and to kill American and coalition troops. Najibullah described their agreement as making an oath. He said that he, the defendant and Zarein made that oath together. Zarein described this as making a covenant.

They didn't have all the specifics worked out about how they would find the Taliban or where they would fight. But they knew what they wanted to do and they were committed to making it happen.

Ladies and gentlemen, make no mistake. These three men weren't traveling overseas to go sight-seeing. They weren't traveling overseas to do missionary work. The one thing that they were certain of was that they were prepared to die and they were prepared to kill.

Now, Zarein testified that the defendant thought about killing others during the fight and that he agreed. You heard that Najibullah said the exact same thing, that their agreement involved killing people. That was the whole point of the plan.

Zarein also testified that victory in this case would mean either removing the American troops or dying as martyrs during the fight.

Ladies and gentlemen, these three men, they weren't just all talk. They took concrete steps to make their plan of fighting with the Taliban a reality. They went to a travel agency to buy tickets for their trip. You learned that even though they were never planning on coming back to the United States, they bought roundtrip tickets so they would raise less suspicion.

Ladies and gentlemen, there is no question here, that these men knew what they were about to do was illegal. How do you know that? Because they came up with a cover story. They decided that they would tell law enforcement that Najibullah and Zarein were going to Pakistan and Afghanistan just to visit their wives. What was the defendant doing? He was going over there to marry Najibullah's cousin.

In fact, you heard from the defendant's own sister yesterday. She told you that the defendant lied to his family about the reason he was going to Pakistan.

Ladies and gentlemen, when do you concoct a cover story? You make up a cover story when you are about to do something illegal and you don't want to get caught.

You learned that the three men tried to recruit others into their conspiracy. They approached Zakir Khan and they told him about their plan. Zakir Khan testified for you that the defendant told him that jihad was his obligation and that for the defendant jihad involved fighting against American soldiers. You know that that's exactly what both Najibullah and Zarein testified to as well.

Zakir Khan testified that the defendant told him that in his view suicide bombing was a good tactic, that it wasn't really considered suicide.

And laying out his plan, clear as day, the defendant told Zakir Khan that he was traveling to Pakistan to fight jihad against the American occupiers.

As you know, in the end, Zakir Khan decided not to join this plot. When he explained his decision to the other men, he told them that he had talked to his parents and he decided not to go.

You learned that the defendant, Najibullah and Zarein tried to talk him out of it. They tried to convince him that his reason for staying back, to help support his family, including a disabled brother, that that reason was wrong.

So on August 28th of 2008, Najibullah, Zarein and the defendant all traveled together, from Newark International Airport to Peshawar, Pakistan. You learned that while Najibullah and Zarein each had three-month visas because they had family in Pakistan and Afghanistan, the defendant only had a one month visa. Before they ever boarded a plane, the three men decided that it would just be suspicious for the defendant to try to get a longer visa when he didn't really have a good reason for one.

But more importantly, it didn't matter. It didn't matter if the defendant had a one-month visa or ten. Because he was never planning on coming back. He was planning on joining the Taliban, getting rid of the American occupiers, or dying on the battlefield in that fight.

You learned that the three men were stopped by law enforcement at Newark Airport and each repeated the same cover story, that the defendant was traveling overseas to marry Najibullah's cousin.

When they arrived in Pakistan, the men began taking steps to join the Taliban. Najibullah and Zarein both told you that the original plan was for Zarein and the defendant to go first, join up with the Taliban and then Najibullah would meet up with them in Afghanistan.

You heard Zarein testify, he wasn't worried about how he was going to meet up with the Taliban. In fact, he knew exactly which town in Afghanistan to go to to meet with the Taliban present.

You learned that the first trip that Zarein and the defendant tried to take in Afghanistan didn't work. They got stopped at a police checkpoint. In fact, the only reason they were able to get out of the checkpoint was because the defendant started reciting verses for the Koran and that let the police officers know that yes, he was indeed a Muslim and not some kind of spy.

Let me interrupt you again. Sorry.

You and Mr. Gottlieb are a pretty big draw. There is a room full of people that can't hear you.

Ilene, who fixes everything, thinks she's fixed this feedback problem.

MS. BERGER: Okay.

THE COURT: Let's try it one more time. I am assuming your patience with all these interruptions and I am grateful for it.

MS. BERGER: How is that?

THE COURT: What do you think, Ilene?

THE CLERK: Let her continue.

MS. BERGER: You will let me know.

THE COURT: Thank you, Ms. Berger.

MS. BERGER: Of course.

Now, after this stop by the Pakistani police, you remember Zarein told you that the defendant said if the police officers hadn't let them go, that he had a plan. He was going to steal one of their guns and just start shooting his way out.

So after it didn't work out for Zarein and the defendant to get into Afghanistan, they returned to the home of Najibullah's uncle in Peshawar. The three men started to form a new plan to get into the Taliban.

Back at the uncle's house, Najibullah, Zarein and the defendant turned to Najibullah's cousin, Amanullah Zazi. You heard that Amanullah told them that he knew a sheikh, a religious leader, that could help them. So Amanullah took the three men to a mosque not far from the uncle's house, and they met with that sheikh. That sheikh told them that he had contacts that could help them travel to Afghanistan to join the mujahideen, or the fighters. You know that the sheikh introduced them to a man named Ahmad. As you learned, Ahmad was a recruiter for Al Qaeda.

Zarein testified that Ahmad told them he was with a better group, that his group was a mujahideen. So Ahmad met with the men and he told them that he could help them get training they needed to be fighters, and the defendant, Najibullah and Zarein, they all said yes.

So they traveled with Ahmad into with a Wazirstan.

Ladies and gentlemen, you learned that Wazirstan is the base of operations for Al Qaeda and that they traveled and they learned more about the group that Ahmad was with. They learned that he was with Al Qaeda. Both Najibullah and Zarein testified that they discussed this specifically with the defendant, and that all three men shared the belief that they had finally made it to Al Qaeda.

After a long journey, they reached a guest house, where the men met other members of Al Qaeda. There they met with Ibrahim and Abdul Hafeez, both senior leaders of Al Qaeda. You saw a photograph of Ibrahim. You heard descriptions from the witnesses of Abdul Hafeez. You heard that those descriptions matched up.

Zarein testified that Abdul Hafeez seemed important to him. How did he know he was important? Because everyone around called him sheikh, which was a term of respect, because he was wearing white clothes which seemed to indicate that he wasn't doing a lot of dirty work himself.

After the defendant, Najibullah and Zarein told the Al Qaeda leaders that they were from New York, Al Qaeda knew that they had found something valuable. In a conversation spoken entirely in English, the Al Qaeda leaders told the three men that instead of fighting on the battlefield in Afghanistan, they wanted them to return home, here, back to the United States, to conduct a mission.

Zarein and Najibullah told you there was no ambiguity about what Al Qaeda meant when they said "a mission." They both believed that they were being asked to return home to conduct a suicide attack.

Najibullah described it the same way. My understanding was that he was asking me to go back to America and carry out a martyrdom operation.

You learned that when they were initially asked to undertake this type of mission, the men said no. That wasn't their original plan. They wanted to go back and fight on the battlefield.

So what did Al Qaeda do? They said okay. They said, we'll get you the training but just think about it.

Over the next few weeks, that's exactly what the three men did. Zarein and Adis gave Abdul Hafeez their passports and the three men were eventually taken to a training compound. There they met other Al Qaeda operatives. Those operatives were their trainers over the next few days.

Najibullah and Zarein described meeting Yousef. Yousef was the trainer who conducted the weapons training. You heard that Yousef spoke perfect English.

They also met Hamad, another trainer at the compound. Hamad also spoke English. In fact, Najibullah testified that Hamad's English was even better than his own.

During this trial you learned exactly what happened at this training compound. Ladies and gentlemen, by now you know that this wasn't just some sort of Al Qaeda summer camp. These men were trained on dangerous, deadly weapons.

Zarein and Najibullah both told you that they were trained on light and heavy weapons, like the AK-47, handguns, PK machine guns, which Zarein testified could be used for ambushes, that they could use to fire at armored vehicles; rocket propelled grenades. Zarein testified that these rocket propelled grenades, or RPGs, were going to be used to shoot at American tanks. Finally they were trained on a weapon called the Ashatari Du, or what Najibullah referred to as a bazooka.

They also received training in how to use grenades. As part of this training they attended lectures. Yousef taught them all about these weapons. Najibullah testified that they were each shown positions of the gun, how to hold it, that they were given military type training.

Zarein testified that Yousef taught them the names of the weapons, in both English and Arabic and he did that so that they'd be able to communicate with the other fighters on the battlefield.

And why were they getting training on these weapons? Zarein testified that the trainers told them they needed to know how to use these weapons for combat.

The men took notes during the lectures. They studied the weapons. They believed they would be using those weapons on the battlefield in Afghanistan.

But you know it wasn't just lectures. The defendant, Najibullah and Zarein got hands-on training, on every one of those weapons. Starting early in their training, they each handled the weapons, learning how to clean them, assemble them, disassemble them, learning shooting positions for these weapons. From the very beginning, they had these weapons in their possession every day.

At the end of the training, the men all had the chance to actually fire these weapons. The trainers took them to a firing range and each of the three men, including the defendant, fired these guns. They fired handguns, the AK-47s, the rocket launchers, and they threw grenades. The defendant even won a special lottery, allowed him the opportunity to shoot a bazooka.

All of this training was conducted in English and all of this training was meant to do one thing -- to turn these three men from New York into terrorists, terrorists that were ready to attack Americans, either on the battlefield in Afghanistan or back at home. The Al Qaeda leaders were giving these men the skills they needed for battle.

But Al Qaeda hadn't given up on the potential these three men had as suicide bombers. They took steps to help convince the three men that returning to the US to conduct a suicide mission was the course of conduct that they should take.

You learned that Hamad showed the men videos that were produced by Al Sahab. You learned that's a media wing of Al Qaeda. These were videos about past suicide bombings that Al Qaeda had conducted. Hamad showed them videos of a suicide bombing conducted against the Danish Embassy in Pakistan, where the suicide bomber drove a car filled with explosives into the Danish Embassy. And why? In retaliation for a cartoon they found offensive. You actually got to see this video.

(Video plays.)

This man was a suicide bomber that conducted this attack.

(Video continues to play.)

This is a video the Al Qaeda leaders showed to these men in Pakistan.

They showed them videos of another attack, an attack that Al Qaeda had conducted in London in 2005, an attack that Hamad boasted to them was one of Al Qaeda's operations.

(Video plays.)

Ladies and gentlemen, this was a suicide bombing attack on the London subways, the same kind of attack these three men later planned to do right here in New York.

You saw a martyrdom video made by one of the suicide bombers from those London attacks.

(Video plays.)

Listen to the words that the suicide bomber said. "We are 100 percent committed to this attack. We love death more than you love life."

After watching these videos and discussing the issue amongst themselves, the defendant, Najibullah and Zarein made a choice. They decided that they would accept the assignment that Al Qaeda had given them. They would return to the United States and conduct suicide attacks right here at home.

Zarein testified that he actually encouraged the other two, saying they had come all this way in order to give their lives as martyrdom and they couldn't just turn away from the opportunity to do that.

Najibullah also testified that all three men, including the defendant, agreed to come back to the United States and conduct an attack here on behalf of Al Qaeda.

Ladies and gentlemen, let's be very clear. Najibullah and Zarein both testified that this was their choice. No one from Al Qaeda forced them. No one put a gun to their head and said you have to come back to do this. This was their choice.

In a somber and calculated decision, the defendant, Najibullah and Zarein chose this path. They chose to abandon their original plan of fighting with the Taliban and they chose to come back to the United States and wreak havoc here at home.

Once they had made their choice, the three men told Abdul Hafeez and Ahmad about their decision. But they also gave a few conditions to Al Qaeda. They told them that they would do the attacks but they wanted a little bit of time. Rather than attending the explosives training right away, Zarein and Najibullah wanted the chance to go see their wives, seeing them for one last time.

The three men also told Al Qaeda that they wanted Adis to return home right away. Remember, they believed that Adis only had a one-month visa and no good excuse for being in Pakistan any longer. They thought that if the defendant stayed longer, it would be suspicious.

Ladies and gentlemen, if there is one thing that let's you know that this whole thing was a voluntary choice, that these men weren't forced or overpowered by Al Qaeda, this is it. They didn't just go back to Al Qaeda and say yes. They came back to Al Qaeda and said, we'll do it but here are our conditions. They told them we will conduct this attack but we will do it on our terms.

So what did the Al Qaeda leaders say? They said okay. They started talking about targets for the attack. Sitting with Hamad, the defendant, Najibullah and Zarein had brainstorming sessions, about which targets in the United States they wanted to hit.

Najibullah and Zarein both told you that those targets included locations right here in New York City; targets like Times Square, Grand Central Station, movie theaters and the New York Stock Exchange.

Najibullah also testified about conversations the three men had with Hamad about bombing the New York City subway. He says, it's the subway, the heart of everything in New York City.

Najibullah explained that Hamad warned them that they shouldn't try to do something too big, that others before them had failed for trying to make their attack too spectacular. If you can't do something big, just do anything.

While the choice of the ultimate target was left up to the three men, one thing was clear. This was to be a suicide attack and it was to be done on American soil.

So as the three men completed their training, the plan was for Najibullah and Zarein to go back to see their wives and for the defendant to return to the United States and keep a low profile.

Now, it turns out that while the defendant, Najibullah and Zarein were in the middle of their training course, Al Qaeda had actually extended the defendant's visa. They wanted him to get the additional explosives training and then come back to the United States to conduct an attack.

But visa or no visa, the three men decided to stick with their original plan. Because, obviously, for the defendant to stay any longer in Pakistan without having some kind of good explanation would raise questions to law enforcement when he ultimately came back home to conduct the attack.

Najibullah and Zarein were going to go to explosives training and the defendant was going to come home to keep a low profile, and the defendant did just that.

But before he left, he left something for Al Qaeda. You learned that he gave $3,000 to Najibullah with explicit instructions that this money would go to Al Qaeda.

Ladies and gentlemen, let's pause for one minute. Let's discuss why you should have no doubt that the group these men trained with, the group these men agreed with, was in fact Al Qaeda.

First, you have the testimony of Najibullah and Zarein, telling you that they all understood, they were dealing with Al Qaeda. You also have the defendant's own confession admitting that the group he was with was Al Qaeda. And that right there, that's enough. That's enough to prove that the defendant met, trained with, agreed with members of Al Qaeda.

But, ladies and gentlemen, you are actually in a position to know more about this group than even Najibullah or Zarein. You heard from two other Al Qaeda operatives, Bryant

Vinas and Saajid Badat. They both told you all about the inner workings of Al Qaeda. They told you that those men that the defendant, Najibullah and Zarein met with, were prominent and important Al Qaeda leaders.

You heard testimony from both Najibullah and Zarein about Hamad. They told you that Hamad was the one that played you these Al Sahab videos; Hamad who told them he had been in Afghanistan immediately after 9/11 when the US began its bombing attack in Afghanistan.

Then you heard from Saajid Badat, who, by the way, has never met Najibullah, Zarein or the defendant. He identified the same man as the person he knew as Jafar, the person that Najibullah and Zarein identified as Hamad, Badat told you was an Al Qaeda operative, an Al Qaeda operative that had translated the very first Al Sahab video into English.

Why did he do that? Because he wanted Al Qaeda's message to be able to reach the United States.

(Continued on next page.)

MS. BERGER (Cont'd): And you learned the real name of this man. You learned that his name is Adnan el Shukrijumah. We read a stipulation. You may have missed it, but the stipulation said that this man said he's English, right here in the United States, Community College in Florida back in 1977. Do you remember Najibullah telling you that he spoke perfect English. Now you know where he learned it. You also heard from Najibullah and Zarein and you heard from Bryant Vinas again Bryant Vinas never met Najibullah. But he told you, yes Abdul Hafeez does exist and the description that Vinas gave of Abdul Hafeez matches up perfectly with what Najibullah and Zarein described.

You heard that Najibullah was not just any al-Qaeda member. He was the head of external operations for al-Qaeda. That means the entire time these men were in Waziristan Abdul Hafeez was the one in charge of plotting the attack for the rest of word, for all of al-Qaeda. Najibullah and Zarein, they didn't know that. They had no idea who they were actually meeting, but slows that when they told you that the men that they were meeting with were serious and important al-Qaeda leaders, that they were right. So after meeting with these al-Qaeda leaders on September 25th, 2008 the defendant flew back to the United States from Pakistan. Back in the U.S. the defendant did exactly what he was supposed to do. He resumed his normal activities -- going to school, working as a doorman in the apartment building in Manhattan, attending a mosque, but despite all outward appearances, the defendant was just waiting, waiting for the other two men to come back with the necessary training so they could actually do this attack, and ladies and gentlemen, far from doing nothing, the defendant was doing exactly what al-Qaeda wanted him to do -- he was readying himself to be a suicide bomber and he was being patient.

Now, once the defendant returned to the U.S. he learned that Najibullah went to explosives training. He told you he returned to the Waziristan to a second training compound where he received approximately one week of explosives training and he told you about that training. He told that he learned how to make a detonator explosive, that that's first initial explosive device that would ultimately ignite the main charge with a bigger bomb. And you learned about fragmentation into this bomb, ball bearings and nails. You learned it from Dr. Yaeger, that is what actually causes so much damage. That these ball bearing and nails essentially become bullets once you explode a suicide vest.

Najibullah testified that he actually constructed a functioning bottom while he was at this training compound. This was a bomb that can be made from product that you could buy anywhere -- a local pharmacy, local drugstore, local hardware store. In short this was a bomb anybody could make.

Najibullah took notes during all this training and those notes detailed all the necessary steps he had to take to build a bomb.

Ladies and gentlemen, Najibullah also testified while he was at the second training he made a martyrdom video. Just as those suicide bombers done in the Danish video, London video, Najibullah sat in front of a video camera, he described his motivations for committing the suicide attack. He said that this was payback. When Najibullah had completed the explosives training he returned to the Peshawar, and there he met pack up with Zarein. He told Zarein about the training. He gave him a copy of his notes, and in fact, he actually recopied his notes and gave the original notebook to Zarein so he could study it, and Najibullah e-mailed the notes to himself from an internet cafe in Pakistan. He didn't want to risk carrying them in his suitcase when he came back to the United States. Najibullah came back to the U.S. on January 16, 2009 and Zarein flew on January 22nd.

Once they moved back to the United States, Najibullah moved out to Colorado. He did that so that he could would have a better opportunity to build these bombs without attracting the attention of law enforcement.

Zarein moved back in with his family in Queens. He started seeing the defendant again on a regular basis. Zarein, and the defendant had discussions about those al-Aqaeda leaders that they had met with overseas, and they discussed ab article that Zarein had read saying the man they knew as Ibrahim was, in fact, a senior al-Qaeda leader.

Now, Zarein also testified that he and the defendant had conversations regarding their commitment to the plot. And Zarein explained when he had been in Afghanistan his wife had actually threatened to kill herself -- kill herself and their child if Zarein returned for additional training. Back in the United States Zarein came upon a verse in the Koran that told him that all of this with his family was just a test, and he discussed this with the defendant, and the defendant, the one who had the most knowledge of Islam of any of the three of them, he encouraged Zarein to stay committed to this plot. The defendant told Zarein he understood, that my family was attacked, but that I should continue with the operation. Now after these conversations with the defendant Zarein testified that at this point both he and the defendant were 100 percent committed to this attack.

On June 27, 2009, Najibullah flew from Colorado back to New York and you learned that during this visit he had a meeting with the defendant and Zarein. They all met up at Kissena Park in Queens and the three men all discussed their commitment to the plot, and they all told each other that they were committed. Not only was the defendant committed, the defendant actually encouraged the attack. He volunteered suggestions for how they could pull it off. The defendant suggested timing for the attack. He suggested that they should do it during the month of Ramadan. You heard Zarein testify about this, and you heard Najibullah say the exact same thing. Not only did the defendant have suggestions about timing, the defendant volunteered the workplace where he was working as doorman in a Manhattan apartment building. He said you could build the bomb in my basement, and after this meeting it is very clear each of the three men had their own roles in this plot. Najibullah returned to Colorado to build the bomb. Zarein was going scout out central locations. It was easy for him because he was working as a New York City taxi driver and the defendant quite simply was to be a suicide bomber, a role the defendant willingly played. You heard Zarein testify about the defendant's role saying he agreed he would be one of the suicide bombers.

Now, you learned after that building Najibullah returned to Colorado. He actually started trying to build a bomb. He went shopping at store like the Beauty Supply Warehouse and he bought chemicals that he could use to make this bomb. And Najibullah flew back to New York on August 17th, 2009. Came back to deal with the coffee cart. While he was in the mosque during this trip he heard from Zarein. He was invited to go to Bear Mountain with Zarein and some of his friends. You learned the defendant was not able to go to Bear Mountain because he had family reasons. While Najibullah and Zarein were at Bear Mountain, they discussed making this bottom. Najibullah and Zarein both decided that New York City subways would be a good target for their attack. They both testified the subways were discussed at Bear Mountains and they decided that this was the target that they could actually pull off, and while the defendant wasn't there at Bear Mountains, you heard that Zarein told him exactly about the plan. They discussed that they would conduct this attack that at Grand Central during rush hour, a time that they knew would cause a maximum number of casualties. And Najibullah told it was always clear, there were three people, there would be three bombs.

And Najibullah and Zarein also looked for chemicals on that trip, chemicals that they could use for the bomb. They testified they went to a Pathmark Superintendent, they looked for hydrogen peroxide and acetone that they could use to build the bomb. Najibullah returned to Colorado to do just that and you learned that he was actually able to build a detonator. He checked into a hotel in Colorado on two occasions. He even stayed in the exact same room and there he conducted a test on the detonator. You learned when he was constructing his mixture of acetone and hydrogen peroxide in the hotel room kitchen Najibullah left a trail. You saw a picture of the hotel room kitchen and you saw the stove where

Najibullah was mixing the chemicals. And ladies and gentlemen, traces of acetone were later found by the FBI in the filters of that very stovetop vent, the vent in the room 208, the room Najibullah was staying in. You actually got to see that vent, and you heard from an FBI chemist, you heard from David MacCullum (ph). He testified that he examined the stove top filter and they found acetone, the very chemical that Najibullah told you he was mixing in that hotel room was found right here in the stove top vent.

Najibullah testified that he had enough detonator for three bombs, and he also knew the formula for a main charge, for that bigger secondary explosive. He knew the main charge recipe for one involving flour and peroxide. He thought there would be easier one, it involves flour and Ghee oil. He just couldn't remember the last ingredient. So what does he do? He reaches out to al-Qaeda, he reaches out to Ahmad. You remember, that would be the al-Qaeda facilitator that helped him get into the camp. He reaches out to Ahmad to try and get this information. Using his cousin's Amanullah's instant messenger account, Najibullah reaches out to another cousin, Zubair Zazi who is living over in Pakistan and he said can you give my e-mail address to Ahmad and just a few days later Ahmad e-mails Najibullah that exact same e-mail address. Ladies and gentlemen, what is the first thing that this al-Qaeda facilitator ask for in this e-mail, in the phone number, e-mail address for Muhammed. And who's Muhammed? Ladies and gentlemen, Muhammed is the defendant. Najibullah and Zarein both testified that was the name of the Kunya that he used over overseas, and the defendant even admitted that was the name he used. So Najibullah writes back to al-Aqaeda and says that he needs the mixture flower and Ghee and he gives the al-Qaeda the telephone number. Again, Najibullah writes back 12 minutes later again asking for the mixture of flour and Ghee and you can see he tells Ahmad the marriage is ready. You know exactly what that means. Before they left Pakistan, Najibullah had devised a code with Ahmad, it involves the wedding or the marriage, and that was the code that attack was ready. This e-mail Najibullah is telling al-Qaeda that he, the defendant and Zarein are ready to go. And back in New York the defendant and Zarein were preparing themselves as well. Zarein testified that he and the defendant had discussions about making their own martyrdom videos just like the one Najibullah made in Pakistan during the training, just like the ones you saw in those videos.

Zarein testified that the defendant shared with him what he was planning to say in his martyrdom video -- that he loves death more than life.

Now, back in Colorado, having not heard back from al-Qaeda, Najibullah decides that he will drive to New York, bring the detonator explosives and construct the main charge here, and on September 4, 2009 Najibullah texts both Zarein and Adis, letting them know he was coming to New York to do the attack in a week.

Now, ladies and gentlemen, you can see here the phone records on the top, they show that Najibullah texted both Zarein and Adis, the yellow and the purple. Adis is the yellow and Zarein is the purple. And you saw the text, you saw that from Zarein's phone and it says that he will be coming on Thursday. Couldn't get a rental car. But ladies and gentlemen, you also sought that before his phone was seized by the FBI on September 14th the defendant specifically deleted this text. You can see from the telephone records the text was sent but on the report from the defendant's phone, nothing. So why would the defendant delete this text from Najibullah? Because he knew the reason Najibullah was coming to town. He was bringing the bomb, he was coming so they could conduct a suicide attack, and once he found that law enforcement knew about this plot, the defendant wanted to erase any evidence tying him to Najibullah or tying him to this plot.

On September 8, 2009 Najibullah arranged for a one-way car rental drive to New York City. Again, why doe he arrange for a one-way car rental? Because he was about to kill himself. He knew there was no chance that he was ever going back.

On September 9, 2009 Najibullah started driving across the country in his rental car coming to New York with bombs in his trunk. Najibullah testified that in his trunk he had a glass jar that was filled with TAPT, the acetone peroxide mixture, and you know that this mixture is a volatile detonator, and Dr. Yaeger told you that kind of mixture would have destroyed a subway car.

What Najibullah and Zarein and the defendant didn't know at this time was that law enforcement was now onto them and law enforcement was following Najibullah on his cross entry drive. You heard the FBI actually arranged for a roused traffic stop just for an opportunity to question Najibullah about where he was going and what he was doing. Najibullah was also stopped on the George Washington Bridge before he entered Manhattan, and while these stop, gave law enforcement bits and pieces of information about what Najibullah was up to. It made Najibullah think that law enforcement might be onto him. So when we he got into the city, Najibullah drove straight to Zarein's house, pulled out of his trunk a glass jar filled with TAPT, the substance they were going to use as detonators for their bomb, and after Zarein stashed the TAPT in his apartment he and Najibullah started driving, and they talked about the stops that Najibullah had had on his trip, and at they drove they realized that they were being tailed. What do they do? They drove to the closest mosque, the Muslim Center, and they dumped the evidence. They poured the remaining chemicals in the toilet in the mosque and they threw the rest of the bomb making materials out, making sure to destroy anything that might give the police an idea of what they were up to. They left the mosque an Zarein went home to get rid of that TAPT, get rid of everything in that last jar that might tie him to this plot. You heard that he threw most of it into the toilet, that he had to use a piece of cardboard to scrape the remaining granules, and when he later tried to burn that cardboard what happened? It ignited. Ladies and gentlemen, the TATP that Najibullah had made worked.

Najibullah meanwhile went to his usual mosque or Abu Bak Mosque and there he saw the defendant. And you heard how Najibullah informed the defendant that the plot was off. They were surround by people who they obviously couldn't speak only. So what did Najibullah do? He wrote out a text on his phone. Never sent it. He showed it to the defendant. He told him that law enforcement was onto them, and that the plot was off.

You learned that later that night Zarein saw the defendant and they also discussed the fact that because law enforcement seemed to be onto them, their plan was off, and they discussed the need to destroy evidence. Zarein told the defendant to get rid of any files he might have in his computer.

Now, Najibullah testified that while he was in New

York he stayed at a different friend's apartment and he left a calculator and scale there. He was planning on using those materials when he built a bomb but after he found out about law enforcement he wanted nothing to do with them, and ladies and gentlemen, you learned when the FBI conducted a search of that apartment on September 14th, what did they find? This, the scale and the calculator (indicating), just like Najibullah said.

So Najibullah flew back to Colorado. He was hoping that he could lay low and once he got there he actually took the hard drive out of his computer and he destroyed it thinking that he could get rid of any evidence of his attack plans. Ladies and gentlemen, you saw that laptop (indicating), the laptop that was found in Najibullah's Colorado apartment, and lo and behold, there was no hard drive in this laptop because the FBI found it.

What Najibullah didn't know is that the FBI had already imaged that hard drive and you remember hearing about that search. The FBI conducted a covert search of that car. They he had towed it to a different location and they searched it and they made a copy of that hard drive. What did they find on that hard drive? A copy of the note that Najibullah had left on his computer -- explosive notes of he had taken at the second training compound in Waziristan, the FBI now had in their possession.

You learned that later from the FBI in Colorado called Najibullah and asked him to come in to speak with them and Najibullah said yes. He brought a lawyer. He went into the FBI's office and he lied. What did he lie about? He told that cover story. Cover story about he and Zarein travelling over there to visit their wives, cover story about the defendant going to try to find his own wife. But Najibullah told you during this first meeting with the FBI they confronted him. They showed him those explosive notes they had found on his computer, and at this point Najibullah knew that he was finished, but he kept lying about a couple of things.

What did lie about? He lied about his friends, and his family. He lied about their involvement in the plot. He wanted to protect them. After this interview Najibullah was arrested.

Now, back in New York Zarein had also agreed to meet with the FBI, and just as Najibullah had done, he told the same cover story. Cover story about visiting their wives, cover story about the defendant trying to marry Najibullah's cousin, and you learned in January of 2010 Zarein was arrested too. And finally, ladies and gentlemen, you learned that even the defendant agreed to speak with the FBI. In September of 2009 repeated the exact same cover story. He told them, yes, he'd been to Pakistan, but he was there to fine a wife, and he told them that, no, I spent the entire time there at Najibullah's uncle's house in Peshawar, and ladies and gentlemen, you know by now that this simply wasn't true. The defendant lied. He lied the same way that he and Najibullah and Zarein had agreed to do before they ever left Pakistan in the first place.

Ladies and gentlemen, at this point I submit that the defendant knew it was just a matter of time. He had seen Najibullah get arrested. He had seen law enforcement searching his house, talking to his friends and family. In short, I submit that he knew that the FBI was building its case and that all roads led to him. So on January 7, 2010 agents from the Joint Terrorism Task Force, JTTF, executed a search warrant at defendant's home to seize his passport and while they were there one of the agents asked him how he had signed his name. He asked him whether he had used the name Muhammed, and you recall Agent Azad testifying that at that moment the color just drained out of the defendant's face. He knew the FBI was onto him and yesterday you heard from the defendant's own sister. She described that moment in exactly the same way. The defendant looked at the search warrant the agents had given him and he saw that it listed federal crimes, federal crimes that he had actually committed, and at that point the defendant knew it was just a matter of time before he, too, was arrested.

During this trial you learned what the defendant did next. He knew the time was up, and rather than spend his life in prison, the defendant decided that he wanted to fulfill the promise he had made to al-Qaeda, the same promise that he repeated to his friends back here in Kissena Park, a promise to conduct a suicide attack here on American soil on behalf of al-Qaeda. The defendant decided that he would get in his car crash it in another in a final act of Jihad. He hoped that he would kill himself and others in this cash. In fact, the defendant thought if he crashed the car hard enough and fast enough, it would secrete a massive explosion that would kill anyone around.

Ladies and gentlemen, at that moment on January 7, 2010 the defendant was prepared die. He was hoping that he would die, and he was hoping that in the process he would kill as many people as he could. And just so there wouldn't be any mistake, just so nobody out there could think that this was just some random car accident, the defendant decided he was actually going to make that final martyrdom video but he did it the only way he could, he did it by the calling 911. He called them and he broadcast that final martyrdom message that he had been waiting to do. You learned the defendant got into a silver Nissan Altima and drove on the Whitestone Expressway. Agents that were following him said he was driving over 90 miles an hour. Then the defendant placed a call to 911, and he screamed in Arabic. In the call you can hear the car accelerating louder and louder.

(Tape played); (Tape stopped)

The defendant wanted to make sure everyone knew this was him, so what does he say:

This is Adis. What does he say next? We love death.

Ladies and gentlemen, these are the same words you heard the other suicide bombers use, the exact same words the defendant told Zarein he was going to use in his martyrdom video.

Now, while the defendant wanted to create and explosion that would kill himself and others, fortunately, the airbag in his car deployed, and the defendant walked away from that crash without a scratch. The car, unfortunately, did not fare quite as well.

Now, after the crash, the defendant got out of car and what did he do? He ran. When Agent Roese finally reached the defendant he arrested him. And you learned that a short time later another member of the surveillance team, Special Agent Spivack asked the defendant how he was doing, whether he was all right, and rather than responding to Agent Spivack's question, the defendant started engaging him in a conversation about religion.

Now, after the ambulance arrived and took him to the hospital, the defendant met with agents from the JTTF, including Special Agent Azad. They read him his Miranda rights and they told him if he wanted to he could speak with him, and you learned over the next two days the defendant decided he was ready to talk, so let's talk about the things that the defendant admitted.

He admitted that he was angry at American foreign policy, and the way that Muslims were treated in the world. He admitted that in 2008 he, Najibullah and Zarein decided that they would travel to Afghanistan in order to fight with the Taliban against U.S. troops that were stationed there. He admitted that they had devised that cover story about going to Pakistan to look for a wife. He admitted he wanted to go to Afghanistan to join with the Taliban and kill American soldiers, saying that he wanted to fight against U.S. troops with guns, and that he wanted to eventually become a great general that would lead his own Taliban troops into battle, and ladies and gentlemen, he admitted that he met with al-Qaeda. In fact, you heard that he described al-Qaeda as good people. He told Agent Azad that he loved Osama Bin Laden more than he loved himself. He admitted that he received training on the very same weapons you heard about from Najibullah and Zarein.

He admitted that he met with people from al-Qaeda, Ahmad, Abdul Hafeez, Ibrahim, Yousef and he described an Arab man with a clean American accent that you now know Amman (ph). He admitted that al-Qaeda asked him to do a suicide attack. He admitted that he thought about and discussed doing this attack with Najibullah and Zarein.

Ladies and gentlemen, he admitted that he, Najibullah and Zarein were close friends.

He called Najibullah the 100 million percent good guy. He said nothing about any sort of falling out between the three men.

Ladies and gentlemen, the defendant asked the FBI agent if he could be traded in some sort of prisoner exchange. The defendant, an American citizen, asked the FBI if they would send him back to the Taliban.

Now, you also learned that there were things the defendant didn't admit, things he just couldn't admit. The defendant admitted that he talked to al-Qaeda about suicide attacks but he claimed he never discussed any targets in the United States. Ladies and gentlemen, after seeing the circumstantial evidence and hearing the testimony over the last two weeks, you know that is just not true.

Now, I'm not 100 percent what the defense is going to say when they got up here, but I anticipate that you will hear a fair amount about the cooperating witnesses. You heard these witnesses testify about their crime. They testified about the choices they have made in life, and the horrific attacks they were planning. Ladies and gentlemen, these are not people that the government expects you to like or respect. In fact, it actually may bother some of you that the government would have even call these witnesses to testify before you at all, but today your are not being asked to like them. I am sure you don't. You are being asked to determine their credibility, and in doing so, you should ask yourself what is their incentive in this case? Ask yourself does what they say is corroborate or support it by the other evidence in the case.

So let's start with the first question. What's their incentive. For Najibullah and Zarein and Brian Vinas their incentive is laid out in writing. They all pled guilty pursuant to cooperation agreements with the government, and those cooperation agreements, those are in event. You can ask for them, you can read them yourself. I urge you to do so. Read that cooperation agreement. See what these witnesses were required to do. They were required to plead guilty to crimes with life sentences. They were required to meet with the government, to tell them everything they know, and not just about other people, but about themselves, about every crime they committed in the past. They are obligated to testify truthfully about these crimes. Now, if they live up to these obligations, the government agrees the government will write a letter to their sentencing judge that lays out all their cooperation, but also all of their crimes, and this letter gives the judge the discretion to give them a lower sentence the judge thinks is appropriate.

You can also read about the consequences for these witnesses if they lie laid out in the agreements. You can read it for yourself. These witnesses, if they lie, the agreements are torn up. They get no letter from the government. They don't get to take back their guilty and may spend their lifetime in jail.

Now, you don't have to believe that these witnesses testified before you because they had some sort of change of heart. You don't have to believe they are now upstanding citizens. Each of theses witnesses testified before because they believed that it is now in their best interests to do so. They testified that for them they believed that this is the best way they can help themselves. Ladies and gentlemen, I submit that their incentive is to tell the truth, but there are other ways you can find that these witnesses are telling you the truth.

First, it is obvious that their testimony is consistent with each other. You heard that Najibullah and Zarein have not had any contact since Najibullah flew back to Colorado on September 12, 2009, but still their testimony lines up. It lines up on a significant fact such as the goal and the target of their attack, to identities of the people they met with, to smaller facts like the codes they used when they were discussing the plot.

In fact, the testimony from Najibullah and Zarein about times and places for important conversations is identical. They both testified about the important conversations in guesthouse in Miram Shah, in the training compound in Waziristan and in Kissena Park in Queens. The testimony on those events, absolutely the same.

And the testimony is also consistent among cooperating witnesses who have never met. You heard that Brain Vinas and Saajid Badat have never met Najibullah or Zarein and yet, their testimony about what they experienced with al-Qaeda matches up. Najibullah, and Zarein testified that during their training they received hands-on instruction on assembling and disassembling weapons, like handguns,the AK47, machine guns. By Brain Vinas testified that in his al-Qaeda training he received training on the exact same weapons. And Vinas testified about the daily routine of the training camp. He testified exactly the same way that Najibullah and Zarein had described it.

And what is important, ladies and gentlemen, is the defendant's own confession corroborates most of what these cooperating witnesses told you. The defendant admitted that the three men went to Pakistan to join the Taliban. He admit ted that they met with senior leaders in al-Qaeda. He admitted tad that they were recruited to do suicide bombing attacks. But it is not simply the cooperator's testimony is consistent with each other. It is also that their testimony is consistent with the other evidence in this case. That's how you can determine whether they were telling you the truth.

During the trial you've heard the testimony from witnesses and you have seen physical evidence that all corroborates what the cooperator told you. For example, you heard from surveillance witnesses and they testified about the chronology of certain events on September 10, 2011, the day that Najibullah arrived in New York City to conduct the attack. These surveillance witnesses testified that Najibullah went to Zarein's apartment and then the two men finally drove around before ending up at the Muslim Center, just the way Najibullah and Zarein described it.

Similarly, the surveillance witnesses confirmed that the defendant was at Abu Bakr Mosque that same night and at the same time as Najibullah, the time Najibullah told you he texted on the phone the defendant at that Abu Bakr Mosque.

You can see that testimony. There's a time that Najibullah arrived at Abu Bakr Mosque the defendant arrived at the mosque, although the time seems to be cut off on my screen. There is testimony shows that, just as Najibullah said, he saw Adis without Zarein, and just as Zarein said, he saw Adis without Najibullah.

You also heard from witnesses that came from Colorado confirmed the fact of Najibullah's testimony about his bomb-making activities. The clerk at the Beauty Supply Warehouse that sold him chemicals with high concentrations of hydrogen peroxide, the hotel clerk checked him in the hotel in the same room two different times. I submit that none of these witnesses had an incentive to lie to you, and yet, their testimony lines up squarely with what Najibullah said. This testimony tells you that you can believe Najibullah because when there's something that he says that can be verified it is.

Ladies and gentlemen, you also heard from Zakir Khan. He testified how the defendant, Zarein and Najibullah tried to recruit him into their plot, to recruit him to go with them to Afghanistan and join the Taliban, that the defendant even tried to encourage him to leave his family behind and come along to fight.

You learned even back in 2008 the defendant thought that suicide bombing was a good work ethic. It is not considered a suicide. It is the same thing as martyrdom and, ladies and gentlemen, you also saw physical evidence that corroborates the cooperators' testimony. You saw IP records showing that Najibullah e-mailed those bomb notes to himself from Pakistan just like he said he did. And you saw phone records showing the amount of times that these three men called each other.

Let's talk about these phone records for a minute because they are important and they're devastating. You saw the phone records from the period for August 2008, the period before the men ever went to Pakistan. You can see that they're calling each other. The defendant is in yellow, Najibullah is in green, and Zarein is in purple. Constant communication before they left on their trip. Let's look and see what happens when they get back. This is the time period of Najibullah's first trip to New York, the trip where he meets with Zarein and Adis at Kissena Park. Can you all see this? What does this show? This shows these men were talking to each other all the time. Najibullah calls Adis, Adis is calling Zarein, Adis is calling Najibullah. Constant communication. Now, Najibullah's second trip to New York, August 17th through August 20th, what do you do see? Again, three men are talking to each other all the time. Adis, calling Zarein, Zarein calling Adis, Najibullah calling Adis, Adis calling Najibullah. This continues to the latter part of that weekend, and if there's one thing that can put to rest this whole concept that they had some sort of falling out, are these phone records. Go back and look at them. You can have all that chart if you want. You will see that during the summer of 2009, right before they were about to conduct this attack, these three men are in constant communication. In fact, the defendant was speaking to Zarein almost daily. In many cases it is the very first call he makes in the morning. Ask yourself if these three men were really on the outs, why are they talking to each other everyday? If there was this colossal falling out, why does Najibullah call the defendant every single time he comes back to New York? Because there was no falling out. These three men, coconspirators, were as close as ever. And all of this evidence, ladies and gentlemen, supports the testimony you heard from the cooperating witnesses.

Judge, about to move into the charges. Is this a good time for a break?

THE COURT: Would you like a break? Ten-minute break. Don't discuss the case.

All rise.

(Whereupon, the jury exited)

THE COURT: How are we doing on the time? When do you think you'll end?

MS. BERGER: I think I probably have another 40 minutes or so.

THE COURT: Okay. We will resume in ten.

(Court recessed); (Court resumed)

(Jury not present)

THE COURT: Please be seated, everyone.

Are you all set.

MS. BERGER: Yes.

THE COURT: Ilene, would you ask them to bring in the jury, please.

THE CLERK: Yes.

THE COURT: Thank you.

(Jury enters courtroom).

THE COURT: Okay. Have a seat please.

Welcome back. We are ready to resume.

Go ahead, Ms. Berg.

MS. BERGER (cont'd): Now, I'd like shift gears and talk about the charges in this case. Before I do, just as Mr. Loona told you in the beginning, the Judge is the one who is going to direct you on the law, so if anything that I say differs from what the Judge tells you at the end of the case, obviously, go with the Judge instead of me.

Before I get to the specifics of these charges, let me talk about for a minute about conspiracy because in four of the nine counts the defendant is charged with conspiring to commit a crime. You will hear that a conspiracy is basically just an agreement, an agreement between two or more people to commit a crime. There are two elements that you need to find for each of the conspiracies charged in the indictment.

First, you have to find there actually was a conspiracy, that there was as agreement, and second, you have to find that the defendant knowingly and voluntarily joined them for some of the counts. There's a third requirement, and that is, that one of conspirators doesn't have to be the defendant, but one of them took some kind of step to further this conspiracy.

So, let's start with the first. As you recall, these are charges that happened here in the United States before the defendant left for Pakistan, and ladies and gentlemen, as I go through the charges, I am not going to do them in the same order they appear in the indictment, so don't be confused.

The first Count Two, conspiracy to commit murder in a foreign country. Now, to find the defendant guilty of Count Two, conspiracy to commit murder in a foreign country, you are going to have to find the following elements beyond a reasonable doubt:

First, you need to find that there was actually a conspiracy to commit murder outside of the United States, and murder just means that you are going to kill somebody deliberately and intentionally. You also have to find while he was still in the United States the defendant joined this conspiracy, and finally, you have to find that at least one of the coconspirators, again not necessarily the defendant, but somebody took a step to further that conspiracy while they are here in the United States.

Now, this whole count relates to the agreement between the defendant Najibullah and Zarein to travel to Afghanistan to fight with the Taliban and kill American soldiers and here you know there was a conspiracy. Najibullah and Zarein both testified about it, both pled guilty to it, you know there was a conspiracy. The question is was the defendant was part of this conspiracy, and for the most part, the defendant concedes a lot of this. The defense admitted that the defendant wanted to join the Taliban and he admitted the defendant, Najibullah and Zarein took steps to make this happen, steps like purchasing airlines tickets, getting on a plane and flying to Afghanistan, trying to recruit Zakir Khan be part of their plan, but what the defendant didn't admit that he actually agreed to go fight with the Taliban in order to kill U.S. and foreign troops fighting in Afghanistan.

Ladies and gentlemen, what else would the defendant have been planning to do once he joined the Taliban? You heard at the time the Taliban was engaged in a war against the United States. The Taliban was fighting on battle fields using weapons, weapons that were designed to kill their enemy. Najibullah and Zarein both testified that they wanted to join the Taliban specifically to kill American soldiers, and they told you that the defendant wanted that same thing as well. They told you that they were prepared to die in battle and they were fully prepared to kill.

Ladies and gentlemen, that's backed up by the defendant's own statement to Special Agent Azad. That statement he admitted that he wanted to go overseas to Afghanistan to join the Taliban and fight against American troops. Also backed up by the testimony of Zakir Khan. He said the defendant Najibullah and Zarein tried to recruit him into the conspiracy. They told him they were travelling overseas to Afghanistan to fight Jihad against the Americans and foreign occupiers.

Ladies and gentlemen, also backed up by all those videos the defendant had in his bedroom, videos that showed Jihadist fighters out there carrying RPGs, and AK47s. All of the evidence makes clear that the defendant agreed to travel to Afghanistan to join the Taliban and murder Americans in Afghanistan, and for that he's guilty of Count Two.

Let's move on to the second category of crimes. These are the crimes that the defendant committed while he was in Pakistan, and there are two counts that fall into this category, Count Five and Count Eight. Count Five charges the defendant with receiving military type training from a foreign terrorist organization, which in this case is al-Qaeda, and for this count you need to find, first, the defendant knowingly and intentionally received military training from al-Qaeda. You need to find that he knew that al-Qaeda was engaged in terrorism, and finally, you have to find the defendant is a U.S. citizen and obviously, for this last point that is not in dispute. The defendant is a U.S. citizen, his passport, there is no dispute about that.

With respect to the first element, the military type training, that is defined to include training in the means or methods that can cause death or serious bodily injury, destroy or damage property; training on use, storage production or assembly of any explosive firearm or weapon. And ladies and gentlemen, by now you know that the training the defendant went to in Waziristan was exactly that, military type training. These men were trained on how to use, assemble handguns, machine guns, RPGs and bazookas. Those are weapons designed for one thing and one thing only: To kill.

During cross examination of cooperating witnesses, defense counsel seemed to suggest that this somehow was not real training, it only lasted a week because the defendant, Najibullah and Zarein were the only students at the compound.

Ladies and gentlemen, be very clear, there is nothing in the law that says that you have to have more than a week of training in order for it to qualify as military training. There is nothing in the law that says there has to be X numbers of student in a class in order for the training to count, and the plain fact is that before they went to the training camp, these three men didn't know how to use the weapons. After the training, they did. That's training.

Now, you also need to find that the defendant knew that al-Qaeda engaged in terrorism. Ladies and gentlemen, of course, the defendant knew this. Remember, during the months before he went to Pakistan, the defendant was regularly watching videos with Najibullah and Zarein that were made by al-Qaeda, videos that showed al-Qaeda engaging in battles, conducted suicide attacks. This is terrorism 101.

And within the very first day that he meets al-Qaeda what do they ask him to do? They ask him to come back to the United States to conduct a suicide attack. Of course he knew they were terrorists. So knowing what al-Qaeda is all about, the defendant chose to be trained by them, chose to be trained by learning to handle and use weapons, and for that, the defendant is guilty of Count Five.

Now, Count Eight charges the defendant with using a destructive device. Now this count is also related to the training the defendant received, and it charges the defendant with carrying or possessing guns, rockets or grenades while he was committing the crimes that are charged in Counts Two and Five.

Now, this relates to the weapons the defendant used and handled while he was at the training compound. In order find the defendant guilty on Count Eight, you have to first find that he was guilty of either Count Two or Count Five. You also have to find that the defendant used or carried a firearm in relation to one of those counts, or that the defendant possessed a firearm in furtherance of those counts. You have to find that the defendant did all of this knowingly and intentionally.

Now, the evidence for this count is the same as it was for Count Five. By now it is clear that while he was at the training camp receiving military training from al-Qaeda, the defendant was taught about weapons. This involved the defendant holding the weapons, disassembling them, assembling them, learning shooting positions and eventually firing the weapons and all of these acts make the defendant guilty of Count Eight.

Ladies and gentlemen, why was he learning to handle these weapons? Was why he learning shooting positions, how to clean them, take them apart? Because those were skills he would need on the battle field. Because, remember, when the defendant was possessing and using these guns, he was still planning to join the Mujahideen and fight the American troops. So all of his training with these guns was all being done in furtherance of the conspiracy that was charged in Count Two, conspiracy to murder Americans abroad.

Now, if you find the defendant of guilty of Count One, you have one more decision to make. You have to find if the defendant discharged any firearm, whether he used a destructive device. Ladies and gentlemen, the grenades, those rocket propelled grenades the defendant handles and discharged at the training compound, those qualify as destructive devices for this count.

So let's move on to the last category of crimes. These are the crimes the defendant committed while he was in Pakistan and then continued when he returned to the United States, and the first of these counts charges the defendant with both providing and conspireing to provide material support to al-Qaeda. In Counts Three and Four. Count Three charges the defendant with knowingly and intentionally providing the material support and resources, including money and personnel, to al-Qaeda. To find the defendant guilty of this you first have to find that the defendant provided some kind of material support to al-Qaeda, and here you heard testimony from Najibullah that when the defendant left Pakistan he left $3,000 with Najibullah with specific instructions to give this money to al-Qaeda. That is material support, but you also learned that the defendant provided maybe even a more valuable resource, himself. He was willing to give himself as a terrorist suicide bomber on behalf of al-Qaeda. He was willing to be an al-Qaeda operative to carry out an attack on al-Qaeda's behalf. That's material support. And all of that makes the defendant guilty of Count Three.

Ladies and gentlemen, you heard from Agent Azad that the defendant told him that he agreed to act at al-Qaeda's direction. The defendant told Agent Azad that he agreed to return to the United States and send more people and more money back to al-Qaeda. So even if you believe the defendant's version of this, he is still guilty of Count Three.

Now, Count Four is almost identical to Count Three, except it charges a conspiracy to provide material support. So for this count you need to find that the defendant agreed with others that they would provide material support to al-Qaeda, and the proof on this is exactly the same as it is for Count Three because when the defendant, Najibullah and Zarein agreed that they were going to return to the United States to conduct an attack on al-Qaeda's behalf they were giving themselves to the terrorist organization.

And ladies and gentlemen, they agreed not just with each other, but with members of al-Qaeda, they agreed with Hamas, with Abdul Hafeez, and when they made this agreement they were guilty of Count Four.

Now, all of the remaining counts relate to the defendant's conspiracy, his agreement to return to the United States to conduct a suicide attack here.

Count One. Count One charges the defendant with conspiring to use weapons of mass destruction. Now, for Count One you need to find a few things. First you have to find there was a conspiracy to use weapons of mass destruction against people or property in the United States, and a weapon of mass destruction, just a destructive device like a bomb.

And ladies and gentlemen, for this element you know without a doubt that there was conspiracy. Najibullah and Zarein both testified about the conspiracy. They both pled guilty to being part of this conspiracy. Why would they plead guilty to being part of a conspiracy to bomb the subways if that conspiracy never existed. They talked about the specific steps they took to push this conspiracy forward, so the only real question you need to ask is whether the defendant joined the conspiracy.

Now, obviously the one thing you can't do is get inside the defendant's head. You can't read his mind so how can you know what he was thinking? Well, you can look at his words and you can look at his actions. Before he left for Pakistan back in 2008 the defendant told Zakir Khan he thought suicide bombing was a good tactic. So, ladies and gentlemen, when you asking yourself would the defendant have been part of this conspiracy to be a suicide bomber, consider his testimony about what the defendant said about suicide bombing in an unguarded conversation back in 2008, and then there's what the defendant told his coconspirators Najibullah and Zarein, they both testified the defendant was fully aware and fully committed to the plan to commit suicide attacks here in New York. They both testified that, yeah, the defendant wasn't going to be the one to make the bomb, that he wasn't going to be the one to scout out the location, but what he was willing to do, what he agreed to do was strap a suicide bomb on himself, walk into a New York City subway and blow himself up, but as with all things in life, actions speak louder than words. So we urge you to look at the defendant's own actions in determining whether he was, in fact, part of this conspiracy.

Now, you learned that the defendant stayed in very close contact with both Najibullah and Zarein after returning from Pakistan. We've already discussed this argument that there was some sort of an irrevocable falling out that damaged the relationship between these three men, but ladies and gentlemen, these phone records overwhelmingly prove otherwise. How much of a following out could the defendant is really have had if he was still calling Zarein daily in the weeks before the attack? Ladies and gentlemen you saw the kind of videos that the defendant was watching days before he was planning to conduct the suicide attack, videos from al-Qaeda showing suicide bombing attacks. I submit that all of this goes to corroborate what Najibullah and Zarein told you, that this defendant was ready and willing to sacrifice himself in the process to kill innocent people.

But more importantly, look at the defendant's actions on January 7, 2010. The day he tried to commit his own martyrdom attack that action shows that this defendant was ready to die, he was ready to kill. His martyrdom message he left with 911 operators shows you that he was ready to do all of this in the name of al-Qaeda. The defendant's words, and more importantly, the defendant's actions fully support what both Najibullah and Zarein told you, that these three friends conspired to take bombs into the subway and kill everyone around them.

Now, finally, for Count One you have to find a jurisdiction element and that's just a legal term. It means you need to find that this offense somehow affected interstate commerce and that element is satisfied if you find that the coconspirators used the internet or e-mail or if they travelled overseas as part of this conspiracy and here you know that both of those things happened.

Najibullah testified that he used the internet to connect with al-Qaeda. Remember, he was e-mailing with Ahmad to get the correct mixtures that he would use for the bomb. He also testified that he searched on the internet for things that he could use for the bomb, and in fact, you actually saw the internet search results from Najibullah's computer and you saw he booked-marked things. He was actually looking for places like Lodes (ph) where he could buy one of the components for the bomb. You also know that after deciding to commit this attack all three men flew from Pakistan back to the United States, so the jurisdictional element is easily satisfied here and all of these things make the defendant guilty on Count One.

Count Six charges the defendant with conspiring to commit an act of terrorism that transcended national what boundaries. Now, to find the defendant guilty on Count Six, first you have to find that there are actually was a conspiracy to kill, maim or assault.

Ladies and gentlemen, this also charges the defendant for the conspiracy to conduct a suicide attack in the United States, I'm not going to spend a lot of time on this first element, but both Najibullah and Zarein were very clear that the goal of this conspiracy was to detonate bombs and suicide attack in New York. The goal of this conspiracy was to kill as many people as possible.

You also heard from Agent Azad that the defendant admitted that when he crashed his car in the Whitestone January 7th his intent was to kill himself and any other people in the car he hit.

Now, for Count Six you also need to find the conspiracy involved conduct that happened both inside and outside the United States. You know by now that the conspiracy started in Pakistan when Abdul Hafeez and Ibrahim asked the three men to be suicide bombers, and the three men agreed to part of the plot in Pakistan and they travelled back to the US to execute the attack. That obviously involved conduct both inside and outside the United States, and you have to find the jurisdictional element, just you did for Count One, and again, the fact that the conspirators used both e-mail and internet and that they travelled overseas easily satisfies that element.

And finally, you have to find a covert act, and that just means that one of the conspirators took some sort of step to further the conspiracy, and for this you have many steps to choose for from. You know that the men travelled from Pakistan back to the United States in order to conduct the attack, you know that Najibullah went out and bought material to make the bomb, and you know that the defendant intentionally crashed his car into the Whitestone Expressway in an attempt to kill himself and others in a final attempt at Jihad. So for all of this, the defendant is guilty on Count Six.

Count seven. Count Seven is almost identical to Count Six. Instead of charging a conspiracy, this count charges an attempt to commit an act of terrorism that transcends national boundaries.

Now, to find the defendant guilty on Count Seven you have to find that the defendant actually attempted to kill, blame or assault somebody in the United States, and this just means that the defendant intended to do this, and that he actually took substantial steps towards doing so. We've already discussed the evidence has shown that the defendant wanted to intended to commit a suicide attack here in New

York. The evidence also shows that he took steps to try to make that happen. Again, you know those step. The defendant flew from Pakistan to the United States. You know he met with Zarein and Najibullah in Kissena Park to talk about the specifics of the plan. The evidence relating to the defendant's car crash is also relevant to this, a clear example of the defendant's attempting to commit this kind of attack.

So as to Count Six you also have to find that the offense involved conduct overseas and the U.S, and that that jurisdictional element is satisfied.

Ladies and gentlemen, for all of that, the defendant is guilty on Count Seven.

And finally, our last count, Count Nine.

This one the defendant is charged with use of a destructive device. This is the same kind of charge that you saw on Count Eight. Now, Count Eight related to the weapons the defendant handles and used while he was at the training compound. This count relates to the explosives, the destructive device that Najibullah, both while he was in the training compound in Pakistan, the second training compound and to the bomb which he ability when he was back in Colorado but the elements for Count Nine are the same. You have to find that the defendant is guilty of either Count One, Three Four, Six or Seven. You have to find that the defendant used and detonated a bomb while he was committing the crime, or charged in this count, or that he possessed a bomb in furtherance of one of those counts. You have to find the defendant did all of this knowingly and intentionally.

Now, maybe you're asking yourself how can you find the defendant guilty of Count Nine when it was Najibullah that was the one that built the bomb in the second training compound and Najibullah who actually started building the bomb in Colorado? Ladies and gentlemen, there are actually two ways you can the defendant guilty of the offense.

First, if you find the defendant in some way aided and abetted Najibullah in committing this offense. Aiding and abetting is just what it sounds like. In this case, if you find someone in this case, Najibullah, actually committed the offense, and if you the defendant aided or abetted him in committing them, that makes the defendant just as guilty. So here you have to find that the defendant knew and intended that Najibullah was going to use or possess a bomb, and that he somehow facilitated or encouraged Najibullah to do that. Now, the testimony at trial shows the defendant knew that he, Najibullah and Zarein were going to use bombs to conduct their suicide attack and the testimony shows the defendant encouraged this. Remember that meeting in Kissena Park, do you remember the testimony that said the defendant was the one who actually volunteered the basement of that building where he was working as a doorman? The defendant was actually encouraging Najibullah to build this bomb by giving him a place to do it.

Now, you can also find the defendant guilty on Count Nine if you find at the time the defendant was part of the conspiracy to conduct a suicide attack in the United States, and at the time Najibullah used or possessed explosives and that all of this was part of a plan and it was foreseeable to the defendant, and ladies and gentlemen, you know that it was foreseeable to the defendant because that was the plan. The whole plan was for Najibullah to make the bomb, so the defendant could take one into a subway and blow himself up. That was the plan. If you find those things, you can find defendant guilty on Count Nine.

And then you have to do a final question, asking whether a firearm or destructive device was discharged and whether there was a destructive device. And as I told you before, destructive device can just be a bomb. So in this case I was referring to the bomb Najibullah built in Waziristan in the second training and the bomb he built in Colorado.

Now, ladies and gentlemen, over the past two hours everything I have gone over is evidence. Strong irrefutable, overwhelming evidence. The defendant is guilty of all nine of these crimes.

Ladies and gentlemen, we told you at the beginning of this case that we would prove the defendant's guilty beyond a reasonable doubt. After all these witness and all this evidence, now it is your turn to consider this evidence, sit down and determine what happened here, to determine these charges without sympathy, without bias, because the fact of the matter is that this defendant made choices. He chose to go overseas to try to kill American men and women who are proudly serving our country in the military. He chose to come back to the United States and to plot a suicide attack on the New York City subways. He chose to get trained by and to support a disgusting group like al-Qaeda. He made these choices freely, he made of those choices willingly, and he made those choices repeatedly, and today the government is asking you to hold him accountable. Hold him accountable for his plots, for his scheming, hold him accountable for the choices that that man made.

Ladies and gentlemen, the evidence in this case shows that the defendant a guilty. Find him so.

Thank you.

THE COURT: Thank you, Ms. Berger.

(Side-bar).

MR. GOTTLIEB: Just as far as time, what is your planning.

THE COURT: Jurors' lunches are here at one to two and I have little drug court session, my own, one to two in another courtroom. So we will go to five to one, break, come back, and you are finished.

(The following took place in open court)

MR. GOTTLIEB: May it please the Court, Judge Gleeson, counsel, Mr. Medunjanin, ladies and gentlemen of the jury, if it were only so easy, if it were only so clear as was just presented to you. It's not. Make no mistake about it, after you hear the summations and after you hear from Judge Gleeson and you hear what the law is and what the law requires of the government, and what the burden of proof is and what the elements are that the government must prove beyond a reasonable doubt before any person, before Adis Medunjanin, is stripped of his presumption of innocence, then and only then will you realize it's not so simple. But make no mistake about it this morning, this trial has certainly brought to the surface our worse fears about the future, the terrorist plot to bomb our subways, plot to set off bombs that could certainly have caused unspeakable deaths and carnage, but this has been a remarkable eight days and you should know that right now. Each of you was selected to serve as a juror in a public trial in this courthouse open to everybody, not a secret tribunal, not a military commission, but a public trial in which ultimately you citizens decide whether or not the government actually proved its case.

Ultimately, for a moment -- take a moment and think about what you are being asked to do. You, as citizens, are the final judge of those facts. You are being asked to see whether or not the government by way believable credible evidence has proved all of the charges, all of the elements beyond a reasonable doubt and you citizens are being asked to decide whether or not the government has provided sufficient evidence as required and explained by Judge Gleeson under the law. You ultimately decide whether or not another human being is guilty under our laws.

This trial actually has reflected the very best about this country, about our system of justice, and you have all have served with remarkable patience, attention, seriousness, but now all the evidence has been presented to you, and you are about to consider your verdict, and you should know that by your involvement, but your serious involvement, by your service and by your commitment to the rule of law, you defy the cynics, the sceptics and all the rest would sacrifice e our precious system of justice because of understandable fears, because of the concerns you have. You ultimately will decide what the facts are, what's been proven beyond a reasonable doubt.

You are being called upon to decide whether or not another person has been proven to be guilty. You, not the government. You, not the FBI. Not a prosecutor and not even a judge. Each of you are being asked to decide whether or not the government actually proved its case. Again, I say just because the government, prosecutor stands up and say so that they have and it is so simple, doesn't make it so, because right off the bat questions jump out at you and we'll deal with it. For the government to stand up right at the beginning and at the middle and at the end and say the overwhelming proof, the proof, the corroboration, the strong evidence are the phone records, just the records and those charts, that that's the proof? That's the support when you were present in the same trial as everybody else, you heard from the witnesses, so you ultimately will decide the facts, about what the phone records really establish, really mean, really signify, and most importantly, you ultimately -- not a prosecutor -- will decide whether or not those phone records mean anything based on the evidence you heard, based on the testimony you heard.

So I ask you right at the beginning, right as you begin to consider what you ultimately are going to be asked to do, I ask you to just pause and to reflect and to consider what you are expected under the law, required to do under the law, and to remember that commitment, the sworn duty to abide by the instructions and the law from Judge Gleeson, and when you do that, and when you really committed to do that deep down inside, even if it's unpopular, even if it's uncomfortable, when you force yourself to follow the law and it as is going to be given to you, you will show everyone in this world that this nation and it's public courts are living proof that we really mean what we say when we declare proudly that this is a nation of laws and not men. So after listening to the government's summation let's get right to it.

It was striking how much time was spent talking about Adis' initial decision to go to Afghanistan. It was striking and surprising, considering that right from the beginning in the opening statements you heard, and I told you that Adis Zazi and Zarein decided to leave New York, decided to go and fight with the Taliban in Afghanistan. That was concede conceded. That was not an issue. It was surprising knowing that, that so much time and energy, and with such feelings to have all that evidence and all those CDs and all those internet tape-recordings and all those lectures played and all those pictures beamed up to you, it was surprising because ultimately each and every one of you will be asked to consider what's the real significance, government, of you showing all of those tapes that were on somebody's computer? Is that really the evidence that Adis Medunjanin under the law as will be explained the essential elements, is that the actual evidence that he entered into the conspiracy at that time to go and commit murder? Is that the proof? You all decide that. Not the government.

The issue -- the first issue, then, as the law was just laid out by Ms. Berger, as Judge Gleeson will explain in greater detail, the first issue for you to decide -- one of the first issues will be what was Adis' intention in going to Afghanistan, what really was Adis' plan, what was his agreement, what was his purpose, what was his conscious objective and purpose, what was his plan, agreement, conscious purpose to go there with Zazi and Zarein.

And to help you decide this issue of intent, yes, think about Zakir Khan, the government. Although he's given immunity, you were told that does not mean that he committed any crime, it is not an issue here, but think about Zakir Khan, and take heart what he told you and who he is.

Zakir Khan, he was a baby faced young man, teenager, growing up in Queens, growing up a Muslim in America, studying, serious, learning about his religion Islam, praying at the mosque. Zakir's teacher was another very serious Muslim, Adis Medunjanin.

Even Zakir was touched and affected by the news from abroad, the killings, the atrocities, the attacks, the drone attacks, Abu Ghraib, the deaths of innocent Muslims. Even Zakir reached the point that he felt the need, that calling, that religious obligation, to join the fight to join Jihad. Zakir told you why even he decided that he wanted to go to Afghanistan, what his clear and specific purpose was to go to

Afghanistan, and he told you, Zakir Khan told you, that his plan, his purpose was to stand up to protect Muslims, to protect his religion.

He, just like Adis, also watched and listened to all those videos, all those lectures that fill our internet, al-Qaeda videos, other videos that are available to everyone, thousands of them, unlimited. Anyone can access them, some many of them spewing hate and venom, but all of them propaganda. All of them propaganda created with one purpose in mind by the people who make them, by the people who know that others are going to press the button and watch them. The significance of those videos, propaganda created with one purpose in mind and that is, manipulation. Manipulation and brain washing of our young, our disaffected and our most, most vulnerable.

So let me just pause and discuss somebody who talked about those videos. Evan Kholmann. There's a reason for a trial. The government presents evidence and a jury is entitled to receive relevant evidence, important evidence that will assist you in deciding the issues in this case. So why exactly did the government call Evan Kholmann? What did he add to your knowledge to decide real issues in this case? And if you think about it he added absolutely nothing.

(Continued on next page)

MR. GOTTLIEB: (Continuing)

Yes, he certainly lectured you about Al Qaeda. He showed certainly how smart he was. He knew all the players involved. He even knew their correct spellings. He seems to have all those publicly available videos in his consulting firm.

Mr. Kohlmann has created his own cottage industry to make a lot of money. The question, and by calling him really at the end of the trial, you are entitled to say or to ask, why? What did he provide, other than, other than to try to scare you, other than to create this specter, this overly broad specter when you know what you ultimately are going to be asked to decide in this case, other than to discuss Al Qaeda and all these people who have no connection to this case whatsoever, why was he called?

The only reason he was called was to scare you. His presence, his testimony, is nothing other than the government's attempt to scare you into convicting Adis Medunjanin, not based on the actual evidence that was presented relevant to each of the charges in each of the elements, but to scare you into convicting Adis based on fear, period. That's Evan Kohlmann. That's what he adds.

So now you go back to Zarein, the government witness, and yes, as you heard, he certainly would have traveled to Afghanistan with Adis and Zarein and Zazi and the only reason he didn't was that he didn't receive permission from his mom and dad. But for that, Zarein could have well have been arrested and charged with these very serious crimes, just as Adis was. The only reason he was not was because his parents told him, absolutely not.

Adis, on the other hand, a bit older, unfortunately, did not ask his parents for their blessings. He did go and he sits here today waiting your verdict.

So you must decide what was Adis's intention going to Afghanistan. In order to decide that, it was important to learn about him, his background, to understand why somebody does something, what is it in your background that led you to make that choice, absolutely, to go to Pakistan.

You learned Adis is a very serious man from Bosnia, at the time 24 years old when he made that decision. His family had to flee their native land, Bosnia. They had to flee to avoid being killed by a madman who was willing to put to death thousands of people simply because they were Muslims, simply because they were Muslims in Bosnia.

The reality of death and oppression then was Adis's background. Adis settles in Queens. He's growing up. He's enjoying all that America and its freedoms provide. But he is still and would always be the outsider, the foreigner, the Bosnian, the Muslim.

Adis is a very serious man. He is an intelligent man, studious, and thoughtful. He attends his mosque. He begins to listen to all those religious leaders, both in person and in lectures.

He too is affected by them in 2006 and in 2007. He is soaking all this in at a time of great upheaval and war and death in Afghanistan. He reads and hears also all about the attacks on Muslims, the drones, the unmanned planes, the Abu Ghraib humiliation. He studies the Koran with men who distort its meaning and who, as it turns out, are part of the process of manipulating this young man and so many others.

Adis, just like Zazi and Zarein and Zarein, learns all about the Taliban. To them, the Taliban were the freedom fighters. They were the force that stood up to the Russians, that Army that was supported by America when they fought the Russians, when they battled to throw out the Russians as occupiers who killed and attacked Muslims. The Taliban represented to Adis and the others the good guys, the heroes.

So finally, after years of listening, watching and studying, Adis does reach his personal decision. In 2008, at a time when Afghanistan and its Muslim population are under attack by other occupiers, by a corrupt Karzai government, Adis decides that he simply could not just stand by. He had no choice. If he was true to his religion, he had no choice but to join and fight to join the Taliban, to fight and protect Muslims and to protect his religion.

You know exactly what his real intentions were, therefore, in going to Afghanistan. Because Agent Azad told you also what Adis's real plan and intentions were in going to Afghanistan. Agent Azad admitted that when first asked about why he decided to go to Afghanistan, Adis Medunjanin said to him, he went because he wanted to defend Muslims. That was his response. That was his answer.

That was the truth. That's important. That's important when you are going to be deliberating to decide what was the plan, what was the purpose, what was the objective. Why? What did he really enter into an agreement at that time, when they first left New York, what was the agreement and understanding and plan in his brain, in his mind with Zazi and Zarein?

So that when you hear that on January 7th, when Adis says what his real plan is, and his real intention is, you know, as you learned and saw earlier in the trial when Zazi and Zarein were questioned about this issue, you know that the government and Agent Azad were not happy solely with that response. So the agent adds during his testimony to you that Adis also said that he intended to kill American soldiers.

Is that really what Adis said? Is that really how he said it? Were those really his words? Was anything said by Adis during that meeting regarding the killing of American soldiers? Was it the result of being led by the agent questioning him, so that he could get that phrase?

It is not so easy for a jury. Because you have to decide, you decide, what did the government actually prove Adis said. So there is a problem with your relying on just a quick phrase, killing American soldiers, and the problem is that that phrase is nowhere to be found in any original handwritten notes of the interrogation filled out by Agent Azad. That's what he told you.

There is a problem with relying on Agent Azad and his memory. You saw how many times he said he couldn't even remember what he testified to at a hearing just a year ago.

There is a problem with relying on what Agent Azad just throws in during his testimony, when you know that he is looking at a typewritten 302. That's the official report that's written some six days after the conversation.

And there is a problem with relying on Agent Azad regarding that interrogation when you do not have a video or an audiotape to prove what was actually said so that you, each member of the jury, you, the ultimate finders of the fact, to satisfy each of you so that you really know what Adis actually said. No video? No audio?

This is one of the most serious cases, federal cases there is, and perhaps even the most serious, considering what you heard about how every member of the FBI was assigned to this investigation. That's not surprising. You know what the allegations are. That shouldn't be shocking. That's understandable.

A case like this, this isn't some petty case. This isn't some shoplifting case. This isn't some run of mill case. This is an all out national investigation going on by our FBI. No video or audio? Of this critical interrogation?

The government wants you to base a verdict on exactly what Adis actually said, but they, the government, make no mistake about it, the FBI, intentionally deprived you, the jury, of the best evidence of what was said. They deprived you intentionally of hearing for yourself so that you could make the determination. Did he really say that? Did he really say, I love Osama Bin Laden more than myself? Did he really say that?

How simple it would have been in today's world. We are not talking about 1932. We are talking about in the year 2010. Everybody has a pocket recorder. Everybody has those videos. Even with the budget crunch, in America, you know the FBI certainly has a video camera, an audio cassette player, something to record this interrogation.

But the government and Agent Azad, they came up with that excuse. And it was a glib, flippant response that also should tell you something and to begin raising questions and doubts. When asked about why you didn't video or tape the conversation, we actually heard an FBI agent say, it's not policy.

Come on. That's not true. And you know it's not true. Because one of the first exhibits the government introduced in this case, I believe it was 117, was a very nice video of Zazi with FBI agents out in Denver sitting with his lawyers on both sides, right from the beginning, a very clear, crisp video. So that you, because it was played by the government, they presented it. You actually had the advantage of actually seeing Zazi, how he's responding, cool and calm and collected. You heard exactly what he said. You heard the follow-up questions. You saw how his answers responded to certain questions.

The FBI managed to have a video recording going on in Denver. Are we really going to believe that somehow this one Department of Justice, this one FBI, somehow the Denver office has all of the resources? Or do they really have a different policy? The Denver FBI has a different policy, that they do it, but the New York FBI doesn't have that policy? Come on. You know that that's ridiculous. You know it's unacceptable. You know it's wrong. And you know that because of that you were deprived of knowing the real statement that was made.

In the way you saw Agent Azad testify and not remember certain things, you cannot base a verdict based on his statements about what Adis said.

If the government had turned on that video, this is what you would have heard, and there would have been no doubt about it. Adis made this decision. It was clear and unequivocal. His plan, his intent, was to join the Taliban and stand up and protect his religion. That was the beginning, that was the middle and that's the end of his intentions. That's what he is thinking. That's what he is planning. That's what his purpose is, to go there with Zazi and Zarein.

No matter how the government tried during its questioning of Zazi and Zarein, and this is helpful in realizing what can happen and how one statement can be taken out of context and really not reflect what the government wants you to believe it reflects.

Think about the testimony, the live testimony, that you saw when Zarein and Zazi testified on the stand. Zarein, on direct examination, on this issue, of plan, of intent, Zarein, at 87-10 of the transcript.

What would you do in Afghanistan?

Answer: We would fight with the mujahideen against the foreign forces.

That's what he said he was planning on doing.

But the government wasn't happy with that on his direct examination, you see, because that wasn't good enough. That wasn't fitting the requirements, the elements of the charge that you are going to hear about. He told you spontaneously what his plan was.

So the government went on. 87-13:

Who were the foreign forces?

Answer: The American forces and the other coalition forces in Afghanistan.

Still not good enough for the government. He's not giving them what they need to meet the essential elements of the crime. So even though he's spontaneously answering the question, still he's not giving them.

So what the government says at 90-13 is:

What did you think you would kill?

Answer: The American forces, the other foreign forces, and the Afghanistan forces.

What did you think you would kill? As a result of your intentions, of and what your purpose and your plan was, the government then follows up and asks that question, what did you think you would kill.

Listen more to better understand what that means and what it doesn't mean.

Zazi on direct examination, at 443, line two:

We made an oath that we would go and join the Taliban and fight with them alongside the non-Muslims who are there to invade our country. Our ultimate goal was to go to Afghanistan and do jihad over there with alongside Taliban.

Again, he's expressing what the plan was, what the conspiracy is, if you want to use that word, what the purpose is. No mention about I am intending, I am planning to kill American forces. That's not the formulation of what they are thinking at that point. This is important. Because this is an essential element of those charges that you just saw.

So the government still wasn't happy, still wasn't happy and satisfied with Zazi's answers. So the government felt the need to then follow up and lead:

Who did you expect to fight against?

Answer: American force and NATOs.

The government, leading:

Did that include killing them?

Answer: Yes.

Okay. So now the government managed to get a line in the transcript so that they can say to the jury, he said something about killing American forces. Except that's clearly not what was his initial responses, what he expressed when he was talking about what he was thinking.

Time and time again, throughout their testimony, on this issue, the prosecutor followed up with those leading questions. They did so because the government knows how the statute reads and what was necessary in order to try to argue that you should convict under those counts.

But, ladies and gentlemen, again, you know, we are in a courtroom and it is so easy when you listen to testimony and you sit in a trial just to arrive at a conclusion at the end because you have a feeling deep inside. You know, you just have a gut feeling.

But that's not what your role is. As jurors, you have such a special role to get beyond just that gut feeling, just the conclusory statements. Your role is to examine, to evaluate, to see whether or not even that essential element of the plan, the purpose, was really proven beyond a reasonable doubt by evidence, credible evidence.

Zarein even went further. At 234:

Right from the beginning, right from the beginning your plan and purpose of traveling to Afghanistan was to join the Taliban, correct?

Answer: Correct.

At 235:

Now, you were asked on direct and cross just now, and I'll ask it one more time --

THE COURT: Slow down a little bit. Gene is taking it down. Sorry to interrupt. Just slow down when you are reading the transcript.

MR. GOTTLIEB: My apologies.

Now, you were asked on direct and cross just now, and I'll ask you one more time, right from the beginning, your plan and purpose of traveling to Afghanistan was to join the

Taliban, correct?

Answer: Yes.

Zazi then went even further in explaining his intention, his plan, his purpose.

Question: So there is no doubt that your intent when you decided to go over there, your intent was to assist the Taliban, correct?

Answer: Yes.

Then finally, at 789:

Question: But whether you killed Americans or not would depend on what orders you were given by Taliban commander, that's what you thought, correct?

Answer: I was thinking to follow the commander's way.

That's it. That's important. That's significant. In analyzing that essential element of intention of purpose, a person's mind process, because that's really what you are going to be asked to do. The only way you could do that is to consider everything they told you, not a snippet here or there, or a word here or there. You've got to feel it here based on everything that was presented to you.

So even there the testimony from Zazi was he said he would just do what the commanders ordered and may not even include killing. So the truth is, the evidence is, that killing was not their intent. Murder was not their intent.

That was not their specific and conscious objective.

While the government just argued, but just look at all of those videos that were on the computer Adis saw and Zazi and Zarein saw. Some of them are disgusting and disgraceful and frightening.

Just remember, no matter what videos Adis may have watched before he left for Pakistan, no matter how many of them were Al Qaeda videos, by Al Qaeda leaders, you know that he was determined not to join Al Qaeda. Even after watching those videos that were played over and over and mentioned over and over by the government, he was determined not to join Al Qaeda but to join the Taliban.

So what's the real relevance of those videos other than to scare you?

And a word about the computer websites and the selected photos that you saw when the government went to a computer website and just showed you a picture here, a picture there.

Remember what the evidence is, that any time you go to a website, you now know, if you didn't know beforehand, but some of us who don't know anything about computers, you now know that the hard drive will show everything that's on that website, whether you viewed the pictures on that site or wanted to view any particular picture on that website, or actually viewed any image on that site.

The fact that the government introduced its hand selected variety of photos, without any proof, without any testimony, because you remember we had Zazi and Zarein on the stand, not once did they scroll through those pictures and say, did you watch this with Adis Medunjanin? Did you look at this photograph with Adis Medunjanin? Did you look at this picture of this bombing or anything with Adis Medunjanin? Not one question was asked regarding their connection with those videos and Adis Medunjanin and anything that was on his computer.

You have no evidence, the government did not produce anything, that Adis Medunjanin actually clicked on any one of those photos.

You will hear that one of the instructions and the principles of law is that as a juror you cannot speculate. You cannot assume. That is really what the government is begging you to do, by just throwing that out without the proof, the connection, that Adis actually viewed them.

So when considering what Adis's intention really was in going to Afghanistan, remember also that you heard both Zazi and Zarein admit that they knew they could just as easily be killed themselves, and the government mentioned that a moment ago in summation also.

This is important in making those decisions about intent. This is why it's important.

Death and killing are obviously a part of war. That's what happens when you go to war and you fight. You can die and you can be killed. You can kill others. But because that is the reality of war, it does not mean that your intent ahead of time is actually to kill others, or to murder others, any more than it means that you intend to be killed yourself.

The reality of war, the result of war, does not mean, by any definition, that that therefore is your intent.

Adis's intent, as that term will be defined by the judge after the summations, Adis's intent was to fight and protect Muslims. That was the extent of his formulated intent and plan in his own mind.

And it would be the same intent for any person going to war, that person knows that he might be killed and be killed but no one would say, no one would say to that person, or about that person, that having made that decision, that he intends to murder somebody, another human being.

No. His intent is to go into war to protect his country, his values, or to defend himself, or in this case, to defend his faith.

When you consider intent you should also consider what the plan was that they actually developed as they prepared to journey to fight with the Taliban.

(Continued on next page.)

(CONTINUED)

MR. GOTTLIEB: There was no plan. There was no preparation. The little they did, the little they prepared for the trip shows as nothing else can that the three of them, these three young men were immature, naive and clueless as they boarded that plane to Pakistan. All Adis and the two others did was buy a plane ticket to Pakistan. They had this romantic version of Jihad in their minds and all they envisioned was joining the Taliban and joining the fight in a foreign land. Thousands of miles away. And other than buying the ticket they did nothing. They didn't buy anything to prepare for waging wars. They didn't buy anything to prepare to murder anybody. They didn't make one purchase of anything that one might logically need to fight in a war.

And where exactly were they going? Zarein tells you well, he heard about a town Zormat. And he knew that the Taliban was there. Okay, other than hearing about Zormat, what else? Questions jumped out at you as you listened to Zazi and Zarein explain their plan. So, exactly how are you going to get there once you landed? Who are you going to contact when you arrived? What were you going to do after you arrived? Do you speak to anybody there to tell them that you're coming? You really thought you could just show up in Afghanistan and join the war?

The evidence is, the truth is, when you think about it, is that Zazi, Zarein and Adis were three young men yearning to protect their religion, but having no clue whatsoever what they were doing, what was in store for them. For the three of them at that moment -- we're talking about when they're boarding the plane and first going to Afghanistan -- at that time, this was simply some religious fantasy that they hoped would play out so that they could fulfill what they thought their God expected of them. And that was specifically to protect Muslims and to protect their religion. And so, they land in Pakistan.

So, no plan and no idea what to do, they landed and what happens next, what the evidence is next, also confirms the absence of any plan or idea about what really is going on or what they're going to do. Zazi, in fact, decides he's not even going to go with them initially. He wants to spend some more time with his family.

All that's discussed and then arranged that Zarein and Adis are going to hop in a cab, travel to Afghanistan. Zazi decides he wants to stay another month with his family and he'll catch up to them later.

There's something absurd about this and I'm not for a moment minimizing, I'm not for a moment making light of what ultimately could have happened here. And it's important for you to understand that. But we're talking about what the law is and what those essential elements are. And this aspect of what went on when they first arrived. There's something absurd about it. These three guys want to join Jihad in the barren forbidding mountains of Afghanistan and with no idea where or how they're going to get wherever they're going to go or how they're going to meet and join up in the future. Zazi gives Zarein his cell phone number and tells him, give me a call, they had no reason to believe there would be any cell phone tower in the mountains of Afghanistan that would possibly pick up that telephone call. How did they know that when Zazi finally decided to even ring him up that they wouldn't be hiding out in a cave somewhere?

But that's what happens. And that adds to this picture that becomes clear about the absence of any plan or thinking out what's going on. And it all goes, then it goes back to what was their original intention and purpose? All of this is important to consider that important issue in considering that important issue.

Zazi hales them a taxi cab, they hop in, they travel with a stranger a few minutes. You hear that Adis sticks out hike a sore thumb because he's wearing regular western clothing and is almost arrested for being a spy, but he's let go and allowed to return once he chants verses from the Koran.

So, what do they do? They double back, they go back to Peshawar. They hook up with Zazi again and they try to figure out, now what do we do? What do we do next? Zazi and

Zarein told you that even now having been turned away, they still wanted and intended to join the Taliban in Afghanistan. That was their testimony. That continues to be their plan. That continues to be their purpose, their conscious intent for being there.

Their intent, their conscious purpose remained the same. It was not murder. That was not their intent or plan.

What happens next also confirms that their plan was never to join Al-Qaeda or go to any Al-Qaeda training camps. You heard how Amanullah, Zazi's cousin, contact his local Imam in the mosque and tells them that he'll be able up to find them someone to help them join the Taliban in Afghanistan.

You heard that he sent the first guy over to them and told them that he was with the Taliban. They liked him, they would have gone with them, but the problem was this guy never shows up again. So, frustrated and still wanting to join the fight, they go back to the Imam, they ask the Imam to keep searching to find somebody who can simply fulfill their purpose, their plan in going over there. So, he sends the second guy, Ahmad.

What's important here is right from the beginning you heard that Ahmad never tells them anything about Al-Qaeda, the testimony is he didn't even tell them his tribe. He only promises them that he'll be able to get them involved in Afghanistan. So, that they can fulfill their still clearly-expressed intention to join the Taliban.

So now, at this point in this story, for your consideration, at this point before they leave in the car with Ahmad, Adis and the others are not told nor do they know that they're going to meet Al-Qaeda leaders at any Al-Qaeda camp and so they leave. They leave because as Zazi told you this is as good as it will get if they have any chance of fighting in Afghanistan, obviously they better go with him or they're not going to be able to fulfill that fantasy of fighting Jihad that they came with.

So, they traveled for days, they go the guest houses, they ride over barren land, further and further away from Peshawar. And they finally reach Waziristan.

Now, the Government wants you to believe, and they spent quite a bit of time both during the trial and in the summation, that the Government wants you to believe that Adis, Zazi and Zarein for some unknown reason, some unexplained unfathomable reason somehow were picked out and selected to be given special treatment and training. They need you to believe that, make no mistake about it because how else can they explain away the absence of any other fighters, any other people training at this training camp. And it is absolutely true, the law doesn't say that you need a requisite number of trainers. That's not the issue. That isn't the reason for those questions or for the consideration of this argument.

The consideration and the fact that when they arrived there's nobody there, that becomes important because you, the finders of fact, you have to decide, is this really a training camp intended to fulfill what ultimately the Government says and alleges Adis received, that being military training, is this really the camp, knowing nobody is there? Is this really even the purpose, ultimately for doing what they did? The absence of nobody is relevant on those issues. And I'll explain it in a moment.

How do they explain the absence of anyone else, no one else being at this training camp, especially in the face of their own witnesses? Badat and Vinas.

Now, the Government called these people. The Government called these terrorists. And Badat and Vinas clearly laid out the training they received and they clearly laid out the training they observed others receive. And you heard testimony that it always involved many others, as much as 30 other trainees, according to Vinas. The problem is the Government's theory simply is not true, as they've laid it out to you regarding this. It doesn't make sense. It doesn't reflect the evidence that the Government actually presented. It's clear that all that happened in this case, when they arrived there, is that Al-Qaeda leaders were handed three Americans, overly anxious young men who just wanted to get involved in Jihad, intent on joining the Taliban. And they saw these three guys as obvious targets, easy marks, to convince to return to America to conduct what Al-Qaeda wanted; suicide bombings.

Guys like Ahmad, Hafeez, Ibrahim, were presented with three young impressionable young men who clearly did not know what was really going on. Young men living some fantasy. Young men who were ripe for manipulation. These three guys were the perfect target. They were the perfect target for Al-Qaeda's leaders whose intentions, right from the beginning, right from the beginning, was to send them back to America to be suicide bombers. And this is credible when you are even considering the issue of training.

It is now undeniable that right from the beginning Al-Qaeda's intention, Al-Qaeda's purpose in having them there, was to convince them to return to America to engage in a suicide bombing. There never ever was any intention by Al-Qaeda to train them for bottle in Afghanistan or anywhere else. There never was any interest or intention, by Al-Qaeda, to have them use any AK-47, grenade, a PK, or a bazooka, or any weapon, other than a suicide bomb, back in America. And it's clear, therefore, that any discussion, even that so-called classroom where they talked about a gun, any discussion was not connected to any crime or plot. It has no connection to any suicide bombing. What happened there in Waziristan had no connection, no relationship to any battle in which any of those weapons would have been used or that Al-Qaeda even wanted them to use.

And there can be no doubt about this because right from the outset from day one the evidence is clear. Ahmad, Hafeez and Ibrahim told the three of them that all they really wanted them to do was return to America and be suicide bombers.

And when their immediate responses were, even after initially thinking about it, was to tell Al-Qaeda, no, that's not why we came here, the Al-Qaeda leaders did not let up. Ibrahim speaks to Zarein and relates that story about the prophet Mohammed. It was the story of Mohammed refusing a man entering into his Army saying that the man was only one man and would not really help him. They're told that there are lots of people fighting in Afghanistan. They do not need any more foot soldiers. That's the evidence. That's the testimony, that shows what was really planning, even why they were there. It had nothing to do with being a potential foot soldier.

They are told, you are just a number. They are told, you need to be back there in America, not here. And their response continues to be: No, we didn't come here to do that. We came here to join the Taliban, to fight in Afghanistan.

And so, the pressure continued.

And the manipulation increased.

THE COURT: Is now a good spot for a break? Tell us and we'll take the break.

MR. GOTTLIEB: I, we can take it right now, Judge.

THE COURT: Now is a good time?

MR. GOTTLIEB: Yes, thank you.

THE COURT: Let's break for lunch, don't discuss the case.

THE COURTROOM DEPUTY: All Rise.

(Jury exits at 12:59 p.m.)

(Continued on following page.)

(In open court.)

(The following occurs outside the presence of the jury.)

THE COURT: Okay, see you at 2:00 o'clock.

MR. BITKOWER: Your Honor, before we break, there are a couple of issues that have come up in the defense summation and I understand and agree with Your Honor's inclination to keep the charge slim. But there are some issues of law that he has now ventured into.

THE COURT: We'll have to get into it later.

MR. BITKOWER: Okay.

THE COURT: Anybody here for the pre-trial opportunity court, it's going to be in Courtroom 13-D on the 13th floor.

See you at 2:00 o'clock.

(Continued on following page with AFTERNOON SESSION)

(In open court.)

(Judge JOHN GLEESON enters the courtroom.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Sorry to keep you waiting, are you ready?

You can be seated if you'd like.

(Defendant enters the courtroom.)

THE COURT: All right, bring in the jury, please.

I just want to be sure you gave me what you intended to give me. I already have a copy of this and ruled on it this morning.

MR. LOONAM: Then I just grabbed the wrong one, Your Honor.

(Handing.)

THE COURT: Thank you.

(Pause in the proceedings.)

(Continued on following page.)

(In open court.)

THE COURTROOM DEPUTY: All Rise.

(Jury enters at 2:10 p.m.)

THE COURT: Please, be seated.

Okay, Mr. Gottlieb, ready to resume?

MR. GOTTLIEB: Yes, Your Honor.

THE COURT: Go right ahead.

BY MR. GOTTLIEB: (Continued)

MR. GOTTLIEB: Good afternoon, everyone.

THE JURY: Good afternoon.

MR. GOTTLIEB: I hope you had a good relaxing lunch.

When I left off, we were in Pakistan and we had discussed the evidence of the pressure and the manipulation that was going on there. And you heard that the Al-Qaeda leaders kept raising the issue about they wanted them right from the beginning to go back to America. They weren't taking no for an answer.

They were separated and spoken to separately at times. They had private conversations with certain of the Al-Qaeda leaders. They played propaganda videos over and over again, the lectures that are played for them, all of this, I submit, it became very clear is really all done with one purpose in mind; that being, manipulation and brainwashing.

And, in effect, we know what we want you to do and you will do it.

The three of them are isolated and the only people around. No other people, no, fighters there. Al-Qaeda takes their passports. And then you heard the final piece of manipulation and pressure, about the story that was relayed to them, one of the Al-Qaeda leaders, about one day they found a Government turncoat. And when they uncovered that Government turncoat, they are told, he was beheaded.

These were statements that are clear as far as why they were being made. There can be no denying it now. But then it becomes clear right from the beginning that the only thing that will happen, if anything is going to happen, is that Al-Qaeda is going to send them back to America, and not engage in any fighting in Afghanistan.

Now, the Government spent an enormous amount of time during the trial as well as in the summation discussing what they keep calling his military training at the Al-Qaeda compound. So, let me make it very clear: Based on the evidence, based on everything you heard from all of the witnesses, Adis did not receive military training.

And whatever he did receive there, whether in the classroom or at the mountain side, whatever he did receive there had nothing at all, and has no connection to any plan to murder or any crime of violence at any time. It is totally separate, distinct, unrelated to anything that Al-Qaeda intended and wanted them to do. You, in fact, during the trial, found out what real training is. You heard from Vinas, you heard from Badat, you listened to Zazi who ended up going to real explosives training. That was real training. What Vinas and Badat went through, that was real training. Those three are the best evidence of what real Al-Qaeda training is.

Vinas and Badat went there for the purpose to engage in actual fighting there, in the mountains. In order to do that, they went through training. That was connected. What they went through. What they, the different courses they took, how long they took it. That was all connected to what they were going to do. The violence that they were going to commit. And this is important, because again, it's not enough just to casually throw out the word training, oh, they learned how to hold a gun or they learned how to stand there for a second or they learned, or they even fired a gun. That's not the issue in this case, in this trial, involving Adis Medunjanin. That's not dispositive of that issue. Because the connection that would have to be made beyond a reasonable doubt is that whatever happened there is connected, is in furtherance of some act of violence that was committed. Some act of murder. And that wasn't the plan. That wasn't done. That wasn't intended by Al-Qaeda. So, what they actually received under the law as it's used in this case was not military training.

The question can be raised, rightfully so, by the jury. So, why exactly was Badat, the shoe bomber, called in this trial? Explain the significance of calling Badat. That murderer, that criminal, that terrorist, when he's talking about things that are going on in 2000, 2001, when he admits and concedes he has no connection at all, doesn't know Adis Medunjanin, Zazi or Zarein. There is absolutely no reason, there was no basis, no fathomable understanding as to why he made an appearance even on videotape other than to give the jury a sense that there's really meat on the bones here, when it didn't exist.

There is no connection.

And Vinas. Tell us, why was Vinas called? Because he was a person who intended and wanted and made clear and was committed to committing murder over there, that was undeniably his idea, his plan, his intent, conscious purpose. That's not Adis's. So, the fact that Vinas, who is a psychopath, if nothing else, the fact that Vinas marches on the stand, the Government calls him and he says I wanted to shoot rockets and kill Americans, over there, and I then received this training, but that's not this case. That's not what the evidence is in this case with regard to Adis Medunjanin. So, Badat and Vinas, why are they called other than to scare the living daylights out of you?

Badat tells you, he spent years in Afghanistan and he spent months in training. He went through five different training exams, he knows what it's like, he knows what Al-Qaeda requires, if, they are, in fact, going to train you. He describes training much differently than what Adis received in just a few days. Badat goes on. Right? The Government's going to call Badat. The Government's witness, that's the evidence, they're calling him for your consideration. So, what does Badat add to this issue of training? Well, Badat tells you, you can expect a minimum of 40 days of training. The traditional amount of time for training is 40 days, not a few hours over a few days, after it's made clear that you're not even going use whatever they're going to be talking about in the field in the mountains, has nothing to do with suicide bombing. That's what Badat, that's what the Government evidence is in this case.

Vinas. Here's a guy who wants to, is so desperate to receive training, he begged to be trained, he bounced around from place to place, from person to person, he just could not break into training. And he needed that training because Vinas, unlike Adis, what he was going to do, he was going over there, Al-Qaeda was training him to fight over there, fire the rockets over there, fire the guns over there, stand lookout over there. There's the connection of what he received and what he intended to do, but you know in this case, that's not Adis. That's not what Al-Qaeda was talking to him about. So, whatever happened over there is not military training connected to any crime of violence.

And that's a critical issue for you to ultimately consider and deliberate on when you're ready to do that.

Vinas also described a much different type of training. Talked about a three course training curriculum. The training included weapons, navigation, GPS, mortars, explosives. All right at the beginning.

There's no doubt that his training, his firing of a gun, is connected to his plan to murder, but that's Vinas. That's not Adis. That's not this case.

So, what about that last day when Adis went to the mountain side and fired the gun? Was that training? Here's the evidence.

First, remember Zarein told you that they went there on the last day. Whether you believe Zarein or Zazi's conflicting testimony regarding this, there's one thing that's consistent and undeniable and is critical to recall and to consider when deciding whether Adis really received military training.

Adis and the two others are brought to the firing range, only after they're told they're not going to ever use these weapons either in Afghanistan or America. That's undeniable in this case. They went there only after it was clear that their intended mission, the only objective Al-Qaeda had, was the suicide bombings. And they knew that that certainly would not involve any of those weapons that were displayed on the board for you.

And common sense tells you that the target practice they then engaged in represented at that point, what's the significance? That target practice represented only the chance of three guys to get their kicks firing the gun, one time, maybe a magazine or one round. Just as Vinas did when he was given the chance, even before he received training. You recall he said even before he received training he was once brought to the mountain side and was given the opportunity to get his kicks in firing guns. That's all that that short time at the mountain side represents.

You can just think of the excitement that any boy or man who's given a chance to fire a weapon, especially in today's video game generation, must have felt. Just being given the chance to fire.

Zazi and Zarein told you that they had never done anything like that before. They had never really fired any guns before. This was all new and exciting to them. This one and only session at the firing range was given to Adis and the others for one reason and one reason alone, and it was not for training. It was a reward for making the trip over there. It was given to him to provide him with a taste of what it would be like. It represents only what training might be like if you really were selected to be an Al-Qaeda operative. And required real training to enter the battle. That's not this case. That's not Adis.

It's almost like those men, and don't for a moment when I say this, and say this, I am again not minimizing or making light of what we're talking about. And the implications of what can happen. This is serious. But when you consider, well, you're saying this isn't training, but they actually fired a gun. They actually were told how to lie down. Somebody talked to them about it. Well, it's almost like those men who travel off to the Yankees and Mets training fantasy camps each winter. They put on the uniform, they meet with real coaches, they're told how to bat, they're told how to throw, how to make the double play. They put on the spikes. At the end of their week at the fantasy camp, they are even given the chance to play in a game. Are they really training to be ball players? Are they really receiving baseball training or are they experiencing what it would have been like if when they were in their teens or their 20s, they actually had some talent and could play baseball. That's what it is, without minimizing it. Just firing a gun. Just having somebody talk to you about it.

It doesn't make it military training. And on the evidence in this case, when you consider all the other guys who really did receive military training, you now know, this case is different. And don't be so fast to say that it's military training without looking at everything.

So, after that, you then know Adis comes home. He leaves, he flies back to the United States in September 2008 and he comes home alone, without Zarein and without Zazi. He comes home alone. You now know because he was not going to be a suicide bomber.

The Government has suggested that Adis had to leave when he did so as not to arouse suspicions, his Visa was only one month and that's why he left when he did. The Government's theory, the Government's explanation, simply does not make any sense. And it ignores what you heard with your own ears.

The evidence you heard clearly showed that Adis's continued absence from New York would be no more suspicious than if Zarein or Zazi who had family back in the United States remained any longer, which they did. The problem with the Government's argument is that Adis's passport was extended while he was there. So, that did not pose any problem. The problem with the Government's theory is that Adis had already been in touch with his family. When he first landed in Peshawar. They knew that he was in Pakistan. His family already knew where he was. He could have just as easily called, said he was going to remain another month or two without raising any suspicions. But that's not what happens.

It doesn't happen because Adis is coming home alone.

He's done. He is different than Zazi and Zarein. They stay there. They stay there for one reason. And that's to receive training to be suicide bombers. Both Zazi and Zarein told you that that was their plan, that was their conspiracy, that was their reason, that was their purpose for staying behind; to receive real training. And from that moment going forward, from that moment, the evidence is overwhelming that Adis is no longer involved in anything that Zazi and Zarein do.

Zazi proceeds to real training and learns how to make bombs without Adis. Zazi has no contact with Adis while he's there. Zarein intends to go, stays behind, first goes home to Afghanistan to see his wife and children.

No Adis. Zarein has no contact with Adis while he's in Afghanistan. Zarein's wife threatens to kill herself and the child. Zarein changes his mind and decides not to continue with any suicide bombing while he's there. He never tells anyone. There's no one that he communicates that decision. He doesn't tell Ahmad, Hafeez, Ibrahim, Zazi or even Adis. The reasons for not announcing it might be understandable or clear so there can be no question raised about Adis not announcing to everybody who did announce it, about him not telling anyone other than the people he told.

But the Government wants you to believe that Adis is still knowingly involved in Zazi and Zarein's plan, in their conspiracy to be a suicide bomber.

So, ladies and gentlemen, the Government, if that's what you're saying, where is the evidence to support that?

The Government says, Zazi told you. They're asking you to believe Zazi. They are saying Zarein told you, you must believe Zarein. Make no mistake about it. Make no mistake about it. In this case, in order to conclude that the Government has proven Adis Medunjanin guilty of any conspiracy, any plan, to be a suicide bomber, to do anything in America, you must believe Zazi and Zarein. You must believe them beyond a reasonable doubt. Because there is, in fact, nothing else there. That's what this case ultimately boils down to. But you saw Zazi. You saw Zarein. You heard them, you listened to them. And you know that those two guys are not worthy of one solitary ounce of credibility. They are not worthy of one ounce of respect. They are not worthy of one ounce of believability.

And with that, there is no proof once Adis returns to America that he's involved in their terrorist plans.

Now, the Government stands up in summation and says listen, you may not like Zazi, you may not like Zarein, you may not like the cooperators. You've got to be kidding me. Like? You should revile them. These guys stood up there and said to you that they intended to come back to America and plant a bomb in the subway.

Killing everyone. That's who the Government is relying on here. And I respectfully submit to you, it can be understandable why the Government at times might have to rely on the co-conspirator to make a case, might have to rely on a bad guy to get another bad guy. There are times that that might be appropriate, but that's not this case. That's not what the issue is in this case.

There may be times the Government has to make a deal with a lying, dangerous, despicable human being who's not worthy of any believability, but ladies and gentlemen, the Government does not get a free pass. The Government does not get away with its failure to obtain any other credible believable corroborating evidence to support those liars merely by saying we had no choice.

There is no free pass in a courtroom when a jury ultimately has to make the important decisions you have to make.

If you want to believe or you want a jury to believe guys like Zazi and Zarein who are admitted liars, frauds, killers, terrorists, then back it up with something, some evidence to show they are telling you the truth.

And contrary to what you heard in the first summation, there was nothing supporting their testimony. Everything they said about any conversations involving them, and Adis, whether in a park, whether on a sidewalk, anywhere, nothing backing that up. There were no tapes, there are no notes, there are no eyewitnesses. Only the word of the terrorists, Zazi and Zarein. So, the Government, they tried. The Government tried to create corroboration by its fancy, colorful, telephone charts. Those telephone records. So, let's talk, yeah, let's talk about those records.

The argument, the suggestion that those records prove anything is misleading. It's disgraceful based on what we heard from the witnesses in this courtroom. First, telephone records demonstrate, in fact, that Adis had no involvement in any plan with Zazi or Zarein upon his return to the United States.

Second, any calls prior to their trip to Pakistan are completely irrelevant. Obviously, they spoke with one another in the months preceding the trip. To think otherwise would be absurd.

Next, the phone records and the colorful charts made clear that once Adis left Pakistan in September of 2008, he had no contact with either Zazi or Zarein while they remained there for an additional four months.

Next, if Adis had agreed to engage in a suicide bombing plot with Zazi and Zarein, wouldn't you have expected some type of contact between them in his four months between his return to the United States and theirs. Some contact to say how's it going, anything I should know, how's the training going, what's happening, what are the plans? Nothing.

Zarein, in fact, testified and the Government has asked you to accept as true that in the months following his return to the United States he had decided against taking part in any suicide mission. Of the and, in fact, the telephone records appear to corroborate that. But you will notice that according to the Government's own charts, Zarein has absolutely no telephone contact with Zazi until the end of June of 2009. This is important. June of 2009. Because things now are really gearing up.

And during that period of time, in that middle time from the time Zarein returned to the United States in January of 2009, all the way through September of 2009, he and Adis had very little and sporadic contact, either by way of telephone calls and texts -- at least according to the records, whatever the records prove.

Zarein testified that he returned from Pakistan in January, yet the phone records show there's no phone contact at all with the Adis until February, and you will notice that each record lasts no logger than a minute or two.

(Continued on following page.)

MR. GOTTLIEB: (Continuing)

And even regarding that, whether the records show a minute, two minutes, or anything else, you don't know if they even talked. Based on the evidence, the testimony, the government presented to you, it is undeniable that those records have minimal value for you, the jury, having to decide this issue.

You can't look at the records and look at something and say, this is proof that Adis actually had a conversation with Zazi. Or that Zazi had a conversation with Zarein. Because that conflicts with what was actually testified to from the witness stand.

To say anything else is to speculate, to add something, to conclude something that is not based on the evidence and in fact is contrary to the evidence because the evidence, the testimony is, you cannot use those records to prove an actual voice to voice conversation.

The government, you presented the witness. You are stuck with it. You can't now try to manipulate what the testimony was to make it something that it isn't.

It is up to the jury to always remember that. So I urge to you examine the government's chart. If you do that, you will conclude that the charts are incredibly misleading and deceiving themselves.

How can the government stand up here and ask you to rely on these charts as proof of conspiratorial conversations when they didn't even ask Zazi and Zarein, the live witnesses, one single question about any of the phone records?

They called Zazi. They called Zarein. They could have shown them those phone records. They could have had live witnesses go through those phone records and say on this date, this record, on this date, I actually had a conversation. On this date, the conversation lasted this long. On this date, this what is we talked about.

Not one question along those lines from their live witnesses. How can the government stand up here and ask you to count up, as we heard in the first summation, count up, they say, look at the records, for contacts between Zazi's phone and Adis's phone, or the way it was -- it referred to in the summation, just count up and see how many conversations they had.

How can the government even argue that, when Zazi himself, when he was on the stand, admitted that he told the FBI that those telephone records are misleading and deceptive because of inadvertent pocket dials. How dare a jury be asked to conclude that all those telephone calls, all those yellow to green or green to orange, whatever the colors are, reflect actual conversations, when the government's own witness, Zazi, said that he was confronted with those calls and that he told the FBI agents, there were a lot of inadvertent calls. Adis's number was in his cellphone and he told the FBI that Adis's phone number was inadvertently dialed.

How dare in a case going before citizens for consideration, how dare the government try to rely on these records when you know that the government did not even bring out anything on their direct examination or even in the summation about any inadvertent dialings, and in fact it was only brought out during cross-examination. That's why you know about that. That's why you know that those telephone records are worthless, not because the government brought that out.

How dare the government try to have you believe that Zazi had significant contact with Adis based on these records, when Zazi himself told you, during this trial, under oath, when he was asked questions by the government, that once he returned to America, he told you he had very little contact with Adis. That is what he told you. That is what Zazi said when questioned by the government.

How does the government then in summation ask you to believe and to conclude that when they were back here in New York, look how much contact they had with one another, when the truth about it was clearly laid out for you by Zazi himself.

Even the summary agent who testified about the phone records, even he, questioned on direct examination by the government, he, interestingly enough, also just left out anything about inadvertent calls. He was aware of them. He had failed to include them in any of the nice colorful charts.

So the government really tried to bury that. There is a reason for that. Because the government is so desperate to have you conclude that there is independent evidence supporting the lying terrorist killers Zazi and Zarein who wanted to bomb the subways, so they said you know what, you don't even have to believe them. But they are corroborated by these telephone records.

That's why that was not provided to you and presented to you. It destroys the entire government rationale for why Zazi and Zarein should be believed.

Look at the records. Look at the amount of recorded calls or indications of connection between one number and the other. You will see how many of them, most of them, are for one minute, one minute, the minimum time. The phone company registers a call one minute. That means that could even be under one minute. It could be 20 seconds. It could be 40 seconds. It could be that the person dialed the number and nobody was there. The phone was turned off. It could be that the person dialed the number and got a voicemail.

It does not mean contact. That's not what the evidence is.

So it is impossible, you could look at those colorful charts until you are blue in the face, I don't care how long you study them, it will be impossible to determine when and if Adis had any conversations at all with Zazi and Zarein looking at those charts.

It all goes back, Zazi and Zarein said we had a conversation. They are worthless witnesses when it comes believability and credibility. That's what they are left with.

Look at the government's chart. Really look at it and you will see there is absolutely no phone contact between Adis and Zazi for four solid months after Zazi returns from Pakistan.

If Adis had been part of this sinister plot, don't you think Zazi would have been quick to clue him in what he learned in Pakistan once he came here? Forgetting when he was over there. When he returns, don't you think when he returned he would have clued in Adis about what he learned at explosives training and what his plan was.

You will see the first telephone contact between Adis and Zazi was on April 2, 2009, and you don't even know if it was a real call. We know that Zazi and Zarein were plotting with one another. We know they were intentionally leaving Adis out of it.

We know that they both testified that they had hardly any contact with Adis upon their return from Pakistan.

That's the evidence, not those billing records.

So what was the purpose of the government introducing those color coded charts and spending so much time arguing to have you believe it?

You now know. It was an effort for you to believe something that simply was not proven by the government through their evidence in this case.

We heard in the first summation a statement made regarding a nine -- a September 4th billing record that reflects a text, a text to Adis's phone.

We actually heard the government say that the evidence is that Adis deleted that text. Where was that? Where did that come from? What witness said that Adis Medunjanin deleted that call or any call? What witness, what evidence, what document, established that in fact Adis Medunjanin deleted anything?

What you did hear is if something doesn't appear in the record, one of the reasons it might not appear is somebody could delete it or you heard that somebody or the billing company just blew it, and the records were inaccurate, or there could be other reasons. That's what you heard.

The one thing you didn't hear, contrary to what was just argued to you, is that Adis Medunjanin deleted any record, at any time.

It is not right. It is not right to be here knowing the awesome responsibility that you have in deciding the facts based on the evidence. You've got to stick to the evidence, the proof. You can't make it up. You can't just spin it in a way that suits your theory. That's not the way this system is intended to operate.

Finally, you look at the -- at that last column that says originating number. Look who is calling who. This is also important to look at.

The originating column, you will see that time and time again Adis is the one calling Zarein repeatedly. Adis is the one calling Zazi. Take note of how infrequently his calls or texts are even returned. To Adis, Zazi and Zarein were two friends. There were two other guys with whom he had shared a very intense and emotional experience in traveling over there. It makes sense that he would reach out to them, even to say hello, to see how they're doing.

Even knowing that there had been real tension and division, Adis still is reaching out to them and the phone records, finally, in fact corroborate exactly what Zazi and Zarein told you in their live testimony about their actions in freezing out Adis because it really at that point is really just a one way street.

So you are left with Zazi and Zarein. Do you believe them, rely on them, for a verdict. Let's talk about their motives to lie, their reasons to brazenly lie to you, look you in the eye, and lie about Adis's involvement.

These two guys have every reason in the world to set up Adis Medunjanin, to lie about Adis. He is their ticket to freedom. He is their one and only way to avoid spending a lot of time in jail behind bars at Supermax.

Both of them signed cooperation agreements. You heard a lot about the cooperation agreements. What are the cooperation agreements all about? Read them. You read them.

Don't leave it to the government simply to say, all it means is you have to tell the truth and they are going to inform some judge if you tell the truth. That isn't what the cooperation agreement says. The cooperation agreement goes into much more. What really are the cooperation agreements then all about?

These sweetheart deals that these two terrorists have signed with the government clearly establish that if the government is happy with their testimony, if the government decides that they deserve a 5K letter, if the government and only these government prosecutors who questioned them on the witness stand decide to do it, then and only then will they go to bat for these terrorists, who were going to bomb and kill men, women and children on our subways and actually ask a sentencing judge to give them a break.

They both face life in prison. Zarein unbelievably had the audacity to tell you, you knowing what you know about

Zarein, what he was planning to do here. He had the audacity to tell you that he actually hopes to receive no time in prison.

Do they have a motive to lie? You bet they do. A motive to lie about Adis? Who else can they set up? The only person who they traveled with, who the government certainly suspected, having seen the travel records, suspected of being involved with them, as the obvious person, and who represents both Zarein and Zazi's lottery ticket to freedom.

Motive to lie? How about getting their monthly government stipend while in jail? How disgraceful is that, for these terrorists? How unbelievable is it that the government doles out money for Vinas, who you saw, who was so proud about how he fired the guns and was a lookout when the shells were flying to kill Americans.

Motive to lie? They have to spend time in prison, they sure don't want to go to that foreboding Supermax, the prison that houses the worst of the worst, the most dangerous. The government had discussions with them. Obviously, it is going to do what has to be done so they don't spend the time there.

Motive to lie? It's called freedom. Freedom, and that's the most powerful reason to lie. It is the strongest force that would have these guys look you in the eye and swear that they are telling the truth when they are really laughing behind your backs, laughing all the way, they hope, back on to the streets.

Just remember when you hear the argument oh, but their testimony matched up so well, remember how many times they met with the prosecutors, how many meetings they met with them, going over their testimony, months and months, meetings, meetings, previewing all of their testimony.

Remember Zazi told you that one of the reasons he and Zarein intentionally cut Adis out of everything in planning and carrying out their suicide bombing plan, he listed a number of reasons. One of them being, Adis, unlike them, Adis is not a good liar. They, on the other hand, they told you, they are good liars.

That's from the government's own witnesses. That's from the guys who the government wants you now to say well, as long as you put your hand up and you say that you are going to tell the truth, we believe you. Why would you lie? You know that lying would hurt you.

But there was more. Zarein in his cooperation agreement gets a free pass and immunity for a wide variety of crimes, tax fraud, lying to FBI agents. He was not even required to plead to receiving military training at an Al Qaeda training camp. That's going to be dismissed, he told you.

Zazi in his agreement is also given a free pass for tax fraud, fraud in obtaining health benefits, bankruptcy fraud, credit card fraud, bank fraud, obstruction of justice.

Just give us Adis and the government will be on your side and go to bat for you. They want the jury to hang your hat on these two guys.

Incredible, knowing what the charges are against Adis, which include the charge of receiving military training at the Al Qaeda training camp, both of them, Zazi and Zarein, are not required to plead guilty to that charge.

If there was any need for proof of a strong reason for Zazi to plead guilty and work out some sweetheart deal for himself and his family, you heard about his letter to his family in December of 2010 when he was trying to convince his dad simply to plead guilty, to safe the government the time and the effort to try him in court. And he admits that the reason he pled guilty was to protect members of his family, his mom and others, who had not been charged, to protect them from being arrested. He pleaded guilty to protect his mother, to protect her from being arrested and charged with very serious crimes.

Powerful? A motive to lie? You bet.

Finally, just on this subject, please, do not be fooled by the terrorist's tears. Zazi when he was on the stand was not crying for anyone but himself. Zazi's tears were the tears of someone who knows very well what he's doing is wrong, what he's doing is wrong to someone who he once considered a friend, someone with whom he traveled, someone with whom he was involved in a very traumatic and emotional time in Pakistan, a fellow Muslim. They were the tears of someone who knows that he only cares about one person, himself, and that he will do anything to save himself, even if it means trying to bury a former friend who always respected and perhaps even loved.

They all have their reasons, Zazi and Zarein, to lie and they did lie. They had to lie in order to serve up Adis to the government, to get the government's approval, to get their break.

Adis, he was not involved with them, because he made a very serious, personal decision while still in Pakistan not to be a suicide bomber. He was not involved because he purposefully, intentionally, stepped away from them. He told them he was not involved. He didn't want to be involved in their plot.

And the truth is they did not want him involved and there was a reason why they didn't want him involved. You learned that while still in Peshawar. There was real conflict, reel tension, that developed between Zarein and Zazi versus Adis.

It's undeniable that the time spent at the Al Qaeda compound was punctuated by constant arguments, conflicts and

Adis and Zazi in fact came to physical blows, physically fighting one another, in one of their last arguments, arguments over food, the proper way to pray, sweating too much, turning on the fan; Adis being perhaps too bossy.

It got so bad that Zazi, he told you, took it upon himself to actually approach Hafeez and undercut Adis and dissuade Adis from being viewed as any type of leader because Zazi wanted it all.

Zazi described him and admitted that he described Adis to Abdul Hafeez as crazy, got too angry, had little patience.

These bad feelings and tensions involved Zarein as well. The two of them versus Adis, that's the way it was when Adis left Pakistan, alone, without them, and returned to America.

By the time they went their own ways, Zazi and Zarein stayed behind in Pakistan, Adis returning alone, the undeniable proof is that Zazi and Zarein then intentionally shut him out and carved him out of their plans.

(Continued on next page.)

MR. GOTTLIEB (Cont'd): First remember, as proof of that is no contact with the Adis while they are still in package and Adis here. Next, you know that once they return they are all back in the United States, Zazi and Zarein have private discussions and actually talk about and agree between the two of them to keep distance from Adis. Zazi and Zarein admit the they viewed Adis in a different way once they return to the United States. Adis was always considered more serious. He was simple. He could be bossy. So when Zazi and Zarein, the two of them, actually had that discussion they actually discussed Adis' involvement and conclude -- this is the testimony, this came from the government's witness-- they concluded that it was unnecessary to include him in any further plans to do anything at all. Nothin g for him to do, to make and assemble bombs, nothing for him to select the targets. They do everything, the two of them together, Zazi and Zarein. They shop chemicals, they experiment with the bombs, they scope out the targets, they decide when and where and the timing, the two of them alone, without Adis. They both confirm ed that they would do all the work. They can see that the plan was that they would do everything to explode the subway and they want you to believe that Adis would just hang around waiting to just blow himself up. It doesn't make any sense. It is absurd.

If he was really still involved they would not have told, they would not have asked, they would not have allowed the smartest of the three of them to just sit around and wait to blow up. That doesn't make sense, and when you deliberate you do not check your commonsense at the door.

So what is the government's proof of Adis' supposed involvement back in the New York, other than the charts? Well, they talk about an e-mail from Ahmad asking Zazi in an e-mail for Muhammed's contact information. So let's just talk about that. In fact, that e-mail also is proof that Adis opinion Adis Medunjanin is not involved. Remember, ever since leaving Afghanistan, Adis has been alone, not in touch with anyone over there. There has been no communication with him, and anyone else in Pakistan. Zazi also had not been in touch with Ahmad and finally reaches out. Zazi reaches out to Ahmad through his family because he needs to speak to him to get the formula to get the missing ingredients. So what's the evidence? Ahmad responds and obviously Ahmad is trying to make contact with the guys who he met while in Pakistan but Zazi's response tells you everything. Zazi's response shows that he at that point does not even himself include Adis in his plan as part of his plan. Even when Ahmad asks for Muhammed's contact, somebody who he met over there, no indication of any contact in between. We know, you know now as a result of of that e-mail that Zazi ignores him. Does not even respond. Does not provide Muhammed's contact information. He is freezing out Adis. He ignores it. So what else does the government rely on to show Adis is involved? Let's go to Kissena Park in July, June of 2009. The government says that that location on that day, there are conversations involving Adis. Okay, so we know there are no tapes, no notes. So the only proof the government can ask you to rely on is regarding anything that Adis allegedly said during a sidewalk-walk or anywhere else, you have to believe the lying terrorist killers, Zarein and Zazi. There's nothing else to back up their statements about any conversations, but this is what Zazi told you about that Kissena Park meeting. It was here that Zazi and Zarein admit that they had agreed to keep distance from Adis. Obviously, Adis is not to be involved at that time -- at that time around the Kissena Park. Zazi recalled speaking to Zarein and specifically discussing with him their intent to create acetone, peroxide did not have that conversation with Adis. Zazi admits that by then he didn't even want Adis to do anything because he wasn't even capable of lying, he was too demanding, to simple and too religious. There's no proof of any details of any conversation with Adis other than Zazi and Zarein's worthless discredited testimony. Why? Why is there nothing else? Because it's a lie. Because it's not true. Most conversations with Adis did not happen. There's no evidence, believable credible evidence that they had.

So the government will say, okay, Kissena Park aside, let's go to Bear Mountain. Bear Mountain. That's a critical meeting. Bear Mountain is the ultimate proof that Adis Medunjanin is not involved in any conspiracy to bomb any subway, to set off any suicide bombs in America. What happens here conclusively proves that he is not part of their horrific conspiracy. Think about it. It is August of 2009. Just a few weeks from the ultimate day of reckoning. The bomb is about to be finalized. Final details, final plans, final duties, final logistics, are to be decided and coordinated and it is just Zazi and Zarein alone, the two of them. Adis is nowhere to be found. He is not invited. He is not asked to be there to learn his assignment. Which subway line, what time of day, where will they go, all that is discussed, final plans are made and Adis is not even invited? Adis is not even involved in that meeting. This is where they decided it is going to be the four or five train. It's going to be Grand Central at the terminal. Adis is nowhere to be seen. He is not part of their conspiracy. Not only that, but it is during this trip, the Bear Mountains trip, that is Zazi and Zarein go to Pathmark together, do a little shopping alone. No Adis. This was a critical time. Trip, conversation, planning, meeting, there is no conceivable logical reason for not having Adis involved, unless he was not involved, unless it was Zarein and Zazi, the two guys now planning, working, intending to pull this off alone.

Adis is not there because he is out and everything that happens in the day leading up to September 10th and on that day itself is the final proof that it is Zazi and Zarein together, the two of them. Adis not involved. Even the final trip to New York Zazi calls ahead to one person as he arrives at the GW bridge. Who is it? Zarein. No Adis. Zazi crosses over the bridge. Goes directly to someone's house. Whose a house? Zarein. Not Adis. Zazi crosses over the bridge, goes to the house and meets one person alone, Zarein. Zarein gets in the car. Together they go to the mosque alone, just the two of them. No Adis. Together they discuss and then throw the explosives in the toilet at the mosque, the two of them, alone. No Adis. They leave together alone. They return to the Zarein's house alone. They throw out more explosives. No Adis.

The evidence establishes Zazi didn't have any contact with Adis ahead of time and admits he only runs into him inadvertently at the mosque that night when there are many others there for prayer, and they don't even talk about it. They don't talk about it. He throws in something about a text but conveniently, there's no proof of that text. Nothing, but his word.

You must believe Zazi in order to even consider convicting Adis Medunjanin. There is some consideration you heard about and we heard in summation that instructions were made to destroy the evidence. What you know about Adis, he didn't destroy the stuff on his computer. You sat here on and on and on the government's played CDs, DVDs, and all the other stuff that paraded before you which they retrieved from his computer, that he really followed instructions, if he was really involved in a plot at that point and was going to destroy evidence, that would not have been made available. That wouldn't have been there when they executed the search warrant. He didn't do that because he wasn't involved in any such conversation.

So at the end of day as you are about to retire to begin your deliberations, the truth is that the government is asking you to base a verdict on the words of two despicable admitted terrorists. The government expects you to ignore the overwhelming evidence that they have every reason in the world to lie and not one reason to tell the truth. There is nothing backing them up at all that is credible and worthy of your belief.

Now, a word about one conversation that I don't believe was mentioned in the summation. There was that telephone call that was played from September 11th Azis calling Zazi. You heard him. No mention was made of it. So let him tell you. Let him discuss what is the significance of that. Nothing. Zero significance. Proof of nothing because this is what you also know before that call. You know that detectives of the New York Police Department were in contact and met with this Imam Wais Afzali, the police informant. You know that after they met with him or when they met with him you know they showed him pictures of three people from the Mosque, Zazi, Zarein and Adis. You know that after that was done by the New York Police Department Afzali then contacts Zazi and you know, therefore, that contact would have been made with Adis just by the Imam's having been confronted with these pictures of these three guys who he knew from the mosque. So the fact that Adis would have any contact on September 11th with Zazi regarding Afzali -- Wais Afzali is proof of nothing. It is certainly by that date not proof that Adis Medunjanin was involved in any conspiracy -- a bomb, anything. It is proof only that the Imam reached out after being contacted by the police to people who he knew. That's the beginning and the end of that phone call.

THE COURT: Roughly, how much longer, Mr. Gottlieb?

MR. GOTTLIEB: This would be a perfect time to break, Judge. I have about another thirty minutes or so.

THE COURT: Take a short break. Don't discuss the case. All rise.

(Jury exited the courtroom)

THE COURT: We are independent recess in the case on trial for ten minutes. (Continued on next page)

(Jury not present)

THE COURT: Are you ready, Mr. Gottlieb?

MR. GOTTLIEB: Yes, Your Honor.

(The following took place in the presence of the jury)

THE COURT: Please be seated, everyone.

MR. GOTTLIEB: May I, Judge?

THE COURT: Go right ahead.

MR. GOTTLIEB: I hope you all had a good break. We were up to Adis' statements.

I've already addressed great deal about them. The government introduced these statements culminating on the session when he was arrested on January 7th, so what's the significance of what you heard Adis say Agent Azad told you I. Adis told Agent Azad on January 7th over and over: I am not involved in any terrorist plot to bomb the New York City subways, unequivocally. The agent told you that Adis was forthcoming, was comfortable, he agreed to speak to them knowing that he was under arrest. The actual words, as we discussed, we don't really know actual words of everything he said, but it was clear I was not involved, and this is important because you know that Adis was forthcoming, he admitted his plans about travelling to Afghanistan, his feelings about America, and his decision that he had no choice but to stand up for his religious by fighting with the

Taliban. His feelings that he expressed, they are not crimes. Nobody's saying that anyone has to agree with anybody's feelings. That's not why we are here. That's not what this case is about. Adis made it clear that he was not involved. He also gave all the background leading up to the trip. The government wants you to believe that some parts of the statement, but not all parts of the statement. The government wants you to believe the parts of the statement that fit in with their theory with the charges but don't believe the parts where he said once he came back he was out. That's not right. You can't pick and choose. This isn't a game. Adis made it clear that when he was pressed to be a suicide bomber to go back to America and to kill himself and others, he said no. That's not why I went to Pakistan. That is not what he intended to do then. That's not what he intended to do when he left Pakistan.

There's no reason that the government has presented to you for Adis to have admitted what he did, all the background, why he went there, but to suddenly then lie about the suicide bombs, there's no reason. He's not an expert. He was just talking in a forthcoming way. So that statement is the very indicia of truth. The government is telling you to believe the statements that fit in with their theory.

So let's go now to the crash and the 911 call. That call and the tape, they are dramatic. The call, the yelling, the sloganeering, they are jarring. The government knows it, and that's why they played it during the trial, during summation, and I will see if they play it again but you, you the jury, you ultimately get to decide what the real meaning is of that call. You get to decide what the call and what the car crash really signifies and what it doesn't signify. You get to make the final decision -- not the government, not the prosecutors. You are the ultimate finders of the fact.

January 7, 2010 this is what you know. Adis has been the target of a public media coverage, serious terrorism investigation. He knows it. The FBI has made it clear to him and his family. Adis know that he is the target of an FBI investigation with all its known ramifications ever since September of 2009 when the FBI first stormed his house. They executed the search warrant in the middle of the night in full battle uniform, guns, SWAT teams, visors scaring his entire family to death. You have to begin to fell it to understand what leads up to January 10th, to understand why a human being does what he does. You have to know and understand and feel what is building up inside of a person.

He has known since September of 2009 that the friend with whom he travelled to Pakistan, Zazi, has been questioned, arrested and charged with terrorism. He has known that FBI obviously wants to get him as well. He's been the target of search warrants, nonstop continuous surveillance, 24 hours a day, seven days a week. Following him everywhere. Not seeing him do anything inappropriate. Not seeing him during that entire time of the investigation doing anything wrong, but he knows that they have the constant eye on him. Is there any question that anyone would feel the pressure, the fear that comes with knowing the government is after him? He knows what he did. He knows he travelled to Afghanistan. He knows he travelled with Zazi and Zarein and he knows where he went. He knows he wound up with those al-Qaeda leaders. He knows what that means. He knows how the United States feels about al-Qaeda. He knows how the United States feels about those guys and anyone certainly who may have gone over there and spent any time there. Adis knows that. He feels that. The pressure grows, the tension. The pressure come to a full boil then on January 7th, 2010 when the FBI makes that one more visit to his home, this time purportedly to seize the passport, this time to make it clear to him that they know he went to Pakistan, they know he went to Pakistan with Zazi who is also under arrest, this time to tell him they know the name Mu hammed. They intentionally calculating conveyed to him on that day and they hand him a search warrant with the statutes written on them and you heard that he checks them on the computer. He learns and concludes the charges conclude conspiracy to commit murder.

Now Adis feels it. Now it boils over. Now Adis is scared out of his mind. He is in full and utter panic. He told Azad, you heard, that he panicked. That was his word Agent Azad told you. That is how he's feeling. You know that that's how he's feeling. You heard the stipulation. He immediately calls his lawyer. There are conversations with his lawyer. He knows it. He's feeling the pressure after all this time. It is understandable. This isn't in a vacuum. This is really emotions. This human being's reactions. He knows he's about to be arrested. He knows that they are not going to distinguish between what he did and what Zazi and Zarein did. He knows that he could be arrested, detained, locked up and that in cases like this, terrorism cases in the United States following September 11th, certainly he knows that everyone will assume he's guilty merely because of his undeniable trip to Pakistan and association with Zazi and Zarein. He knows what happens to people charged with these types of terrorism charges. He heard all about Zazi's arrest. He read newspapers. He knows how hated he will be. He knows how hated his family will be.

He gets into the car. He speeds off. Deep down believes there is no place to go other than to kill himself so he thinks all about those propaganda videos. He has seen them and you have seen them. All those propaganda slogans and instinctively he calls 911. He yells the slogans he's heard over and over again. It's like the slogans, the chants that often come into our culture that people can just mouth off, whether it is "power to the people" or anything else. It can becomes part the culture they hear over and over again. For Adis and his background and CDs and the things he heard, what he expressed comes from what he has seen and heard in those propaganda videos over and over again.

It does not -- it does not reflect an act of Jihad. It is simply human emotions boiling over. It is too easy to say that because somebody yells the slogan and you know what that person did in going to Pakistan, it's simply to easy to chalk it up to Jihad as some game where you fit it into the holes or the slots. That's not what it is. You have to understand or try to understand the significance of the act. Think about it. Think about it. If he really intends to committed and at of Jihad, if he really intends to kill others as an act of Jihad, in addition to himself, he would done a much better job. Certainly, he would have called, if he was really involved in the conspiracy with Zazi and Zarein, he would have called them, he had enough time to call them and say he's going to do something like that. He doesn't do that. All he does is calls his lawyer.

If it was really an act of Jihad he would driven really fast, he would have crashed his car in an accident that would have created at least a scratch, a bump, something. Here there was nothing. If it was really an act of Jihad he would sped down the expressway in the wrong direction to hit ongoing in traffic. He could have driven off the bridge in a dramatic act of suicide, if he really intended this to be his final act of Jihad, his suicide bombing. He would have first stopped off, gotten some gas, something that would at least cause a spark, a fire, something. Does none of that. He could have driven on the sidewalk crashing into people going about their daily lives. Doesn't do that. Nothing like that anything of that happens because that is not what really is going on in his mind.

When Adis got into that car instinctively, spontaneously, just moments after the FBI left his house, he is out of it. He is not thinking clearly. He is frantic. He is desperate. If it really was an act of Jihad would you really then expect him after the crash to simply get out, run a few paces, when the agent says stop, immediately stopped, turned around and come back? Really an act of Jihad would he really immediately then speak to the agents, be comfortable and relaxed and considerate to them? That's really how he was feeling at that time?

This was just a young man who had reached his limits. That is what the car crash represents and that is all it represents. Any other conclusions simply is not supported by the evidence.

That then is this trial. That then is what this case is really about. There's absolutely no doubt whatsoever that the government has proven beyond a reasonable doubt that Najibullah Zazi and Zarein Ahmedzay are guilty. They are guilty of entering into their own conspiracy to bomb New York City subways. Whatever they are guilty of, you can be sure it does not include Adis being guilty of any plan whether when he went over to Pakistan, or any other time. Adis, on the other hand, never ever entered into any plan -- conspiracy to murder anybody. That's not what this case is about. There is no doubt that the one person who the government failed to prove to be guilty by way of evidence, failed to prove beyond a reasonable doubt is that young man Adis Medunjanin. January 7, 2010 Adis Medunjanin's life changed forever. He sits here today knowing that you are about to make the most important decision in his life. He knows what he did. You know what he did. Adis knows what he didn't do and you now know what he didn't do. He is the person who is on trial. Going to Pakistan turned out to be the biggest mistake in his life. He is paying for that mistake, but that does not mean that he, in fact, is guilty of the crimes for which he stands accused.

For two years Adis has said and continues to say I am not guilty. Zazi knows what he did. He said guilty? Zarein knows what he did, and he said guilty. Adis Medunjanin knows what he did and he has said I am not guilty. So now it is back where we began. It is up to you citizens in an open public trial, it is up to you, and only you, to decide whether or not the government has met its very heavy burden of proving this young man guilty of the charges with real credible believable evidence and not based on speculation, whim, surmise, fear, or prejudice. When you were selected as jurors, it wasn't so long ago, you solemnly accepted the awesome responsibility to get beyond the emotion, the fear and to perform your duty as required by the law, as given to you, explained to you by Judge Gleeson, and when you do that, and you will do that, when you do that you breathe life into our lives. You make them real. You turn our Constitution into something much more than just some historical parchment kept under glass somewhere for people to view. You know -- this nation's precious system of justice, which leaves the ultimate decision of whether a person is charged by the government with crimes is, in fact, proven guilty by the government in a trial, what a noble and awesome responsibility you have. By your service and what you do, that truly is what makes this nation unique and something for each of you to be very proud of, and that is why justice is found in our courtroom every single day. That is why we thank you for your service and that's why when you look at this case and what it is and what it isn't, based on the evidence, we ask that you declare Adis Medunjanin not guilty. Thank you.

(Continued next page)

THE COURT: Thank you, Mr. Gottlieb.

Mr. Bitkower?

MR. BITKOWER: Thank you.

THE COURT: Yes. Get miked up, by all means.

MR. BITKOWER: If I can figure it out.

Good afternoon, ladies and gentlemen.

That was an outstanding presentation. That was an outstanding presentation, but I submit to you, it could have been written before this trial ever started. Because it was based on themes, not the evidence. It was based on suggestions and insinuations, but not the actual facts. It was based on speculation and not common sense.

Every one in this courtroom should be proud that a defendant charged with crimes as serious as Adis Medunjanin received a defense as skillful and competent as he did, and nothing I say today should be considered as anything other than respect for the outstanding team of professionals who defended him.

But as I will discuss, the facts presented by counsel do not accurately and truthfully reflect the record of this trial, and the arguments made by counsel, when followed to their logical conclusions, simply do not make any sense.

I will start with the discussion of the cooperating witnesses. Because, as counsel said, that is the central argument in his presentation.

Everything he said hangs on the question of, can you trust Najibullah Zazi and Zarein Ahmedzay. He said you can't.

A couple of points to start off with.

Obviously, it goes without saying, we would have preferred to call pillars of the community to testify about the defendant's crimes. But the defendant didn't choose to join the Taliban with pillars of the community. He didn't attend an Al Qaeda training camp or agree to conduct suicide bombings with pillars of the community. He chose instead two of his best friends, Najibullah Zazi and Zarein Ahmedzay. That's why the government called them.

And just another preliminary point. The defendant cannot just say that Najibullah Zazi is lying. That doesn't do it for him. He has to say that Najibullah Zazi and Zarein Ahmedzay are both lying or he's guilty of every count in the indictment. And these aren't just people the government found on the street corner to accuse him of a crime. These aren't people who were in the next cell who called up and said hey, I heard him talking about some crimes.

These are the guys who went to high school with him, the guys who played basketball with him, the guys who prayed with him, the guys who traveled with him. He has to say both of these men are lying about him or he's guilty of every count in the indictment.

And just one more preliminary point. He doesn't say they are lying. Defense counsel does not say these two men are lying about most of what they testified about.

Defense counsel believes and adopts most of what they say. He believes they are telling the truth about their background, about their friendship, their friendship with the defendant, about their radicalization, about their decision to join the Taliban, about their training with Al Qaeda, about their own agreement to conduct a suicide bombing on behalf of Al Qaeda in New York City, about their plans on how and where to conduct that attack, on their selection of the New York City subway system as the target, on the decision of when to attack, September 2009, on their creation and possession of explosives, and on the unravelling of their plot and their destruction of evidence.

All of that according to defense counsel is true, all of it. And common sense tells you that's true because people don't usually just walk in and plead guilty to heinous crimes of terrorism that they didn't do.

So defense counsel's argument when we look at it and follow it to its conclusion is that Najibullah and Zarein are telling the truth about everything except they are both lying about their friend. That's the argument.

Let's look at that argument.

The only way defense counsel can make that argument and make any sense at all is to say Najibullah and Zarein had to finger the defendant in order to get a cooperation agreement. That's the argument. You heard it in opening statement. You heard it on cross-examination. You heard it just now. They had to finger the defendant to get a cooperation agreement, and that argument, that central premise of everything counsel just said, does not make sense and is not consistent with the evidence you saw in this case.

Najibullah Zazi arrested September 2009, comes in to cooperate February 2010. You heard the testimony.

The deal is, the deal he made with the government, and you saw it in evidence, Government Exhibit 315 -- you should ask for it. You should read it. It is that when he comes in to proffer he has to tell about all of the crimes he committed and all of the crimes he knows about.

Okay. He sits down, he told you for a month of debriefings, a full day, a half day. He didn't choose the questions. He couldn't say, I am not talking about that guy. I am only talking about that guy.

If he lies, he doesn't get a deal. So what does Najibullah say? You heard it from the stand. He says he's guilty. He says he is guilty of all of these crimes.

He says Adis is guilty of all of these crimes. He says Zarein is guilty of all of these crimes.

He says his cousin Amanullah is a terrorist. His cousin Amanullah is the one who gets them to a training camp.

Knowing their goal, knowing they want to kill American soldiers in Afghanistan, his cousin hooks them up. You heard Najibullah testify about that from the stand.

His uncle, Lal Mohammed, in Peshawar, is guilty. His uncle Yasin tries to help them out. Ahmad, the man who drives them to the camp, he is guilty. He works for Al Qaeda. Ali, the driver who helped Ahmad; Ibrahim, Al Qaeda trainer; Hamad, Al Qaeda trainer; Yousef, Al Qaeda trainer; Abdul Hafeez, Al Qaeda leader; Assim Tofiq, the bomb trainers; Yunis Mohammed; Jungeer. You heard that Najibullah had to answer questions about everything he knew for a month and you heard from the stand how he testified about all of these individuals, all of them.

Then he signs an agreement in February to testify against anyone and everyone, all of these guys. Every one on this board he has to testify against if the government asks.

The defense wants you to believe that if he takes this guy off the board, he doesn't get a 5K. He doesn't get a 5K. He has to -- we don't have photos for all of the other dozen people I mentioned. But if he doesn't put this face up there, he doesn't get a 5K. That's the argument.

That doesn't make any sense at all. Look at the agreement. There is nothing here that says you have to give 13 terrorists, not 12; there has to be three people in a suicide bombing plot, not two; there has to be three people who wanted to kill, not two; there has to be 101 people you have talked about in the session, not 100. It doesn't exist in the agreement. It doesn't make any sense and you can conclude it's not true.

Najibullah pleads guilty in February. You heard Zarein Ahmedzay comes in in April, two months later. The same deal, the same terms. You talk about everyone you know. You cooperate against whoever the government asks.

What does Zarein say? He says, I'm guilty. I'm guilty. Everything Najibullah said I did. It's all true.

And they haven't had any contact since September 12th of 2009. They haven't talked. But in April of 2010, he says I am guilty.

He says he committed a conspiracy to commit murder in Afghanistan; the Al Qaeda training that you heard from Najibullah, he did it. The subway bombing plot you heard from Najibullah, he did it; possessing grenades, AK 47s, explosives, he says he did it.

What does Zarein say? He says, I am guilty. Adis is guilty.

Who else? Najibullah is guilty, since you ask. Najibullah is guilty.

He's pled guilty already in February but you heard all about how the government can add new charges. When Zarein comes in, having not talked to Najibullah for months, no way to know what Najibullah has said, and tells you Najibullah is guilty, he's agreeing to cooperate against Najibullah if the government finds that Najibullah is lying and adds charges. If the government wants to present evidence at Najibullah's sentencing, he's cooperating against Najibullah. He's cooperating against everyone on this board.

Again, they want you to believe that the only way Zarein gets a 5K is this guy. It doesn't make any sense.

I think the quote from counsel just now was, when they came in, they were told by the government just give us Adis. When we talk about facts and evidence and not themes and insinuations, look at the record. Where does that come from? I submit to you, that comes from defense counsel's head. When we talk about fantasies, that's a fantasy because there is no evidence to support that.

What the agreement says, what the testimony was is, they testified, they cooperate, against everyone. And there is no need to put in Adis if Adis is not guilty.

And just an aside, if they were making it up about Adis for some reason, which they have no motive to do, don't you think they would have done a better job at it? Does it make any sense? They are saying Adis is part of the subway bombing plot. But they choose the subways. Zarein has private conversations with Adis. Why not say, yeah, Adis thought it was a great plot. We should go after the G train.

Everybody hates the g train. Let's blow up that. Right? He doesn't say that.

They talk about how they go to Pathmark together. They don't say Adis goes to Pathmark with them. Right?

Let's talk about the pocket dials for a second. This is a perfect example of what the evidence shows is that these cooperating witnesses were extremely careful to be accurate and truthful when they talked about everybody, including Adis.

You heard and you saw on Government Exhibit 173, the phone chart, that there are calls between Najibullah and Adis initiated by Najibullah which are pocket dials.

You heard from the government investigator John Ross that those calls were approximately 400 seconds. And if anyone has had a pocket dial before, most people probably have in their lives, that makes sense. You pocket dial somebody and it goes on until you realize it is pocket dialing or until the voicemail runs out.

There are in Najibullah Zazi's phone records two calls, on August 26th and August 28, 402 seconds and 407 seconds. August 28th, at 12:40 pm, what is happening then? Najibullah Zazi is at the Homestead Suites cooking up acetone peroxide, cooking up the bomb the detonator is going to use, by his own admission, to blow the up the subway with Adis and with Zarein.

And the phone records show he calls Adis at that time for 400 seconds. And the testimony was that the government said to him, what's the deal with these phone records. It looks like you called Adis. And Najibullah Zazi told you that what he said is, that's a pocket dial.

Is that the testimony of someone who is making up the involvement of a defendant in this plot? Does that make any sense at all? His only motivation is to make up charges against this guy because he's the only one he needs?

He knows there is a phone record that shows that there is a 407 second cal while he's cooking the acetone peroxide and said it's a pocket dial. It doesn't make any sense at all.

I submit to you, what that shows is that these witnesses are not falsely implicating their friend. What it shows is they are trying to be careful to tell the truth.

Another point. Not only do they not have any motive to lie, because there is no benefit to throwing someone else into this if they are not involved, they have every motive in the world not to lie. These agreements are not magic. They are not a truth serum. They don't take killers and make them into good people. They don't make people likable. But what they do is they change motivations. That's what they do.

If the witness tells the truth and they get a 5K letter, then one day they have a chance of making a case to a federal judge as to why they should get out of jail.

As you heard from the stand, if they lie the agreement gets torn up. What this agreement is is a giant anvil hanging over the head of the cooperators until they are sentenced. If they lie it drops.

If they wanted to lie, if they had some reason to want to lie, each of them remember, both of them independently had some independent reason without talking to each other to want to lie and make the defendant guilty of this plot, they couldn't do it. They don't know enough. They don't have enough information. They can't talk to each other. They don't know what each other is going to say. They don't know what all of the other evidence in the case is.

You heard from Najibullah, he doesn't know who else is testifying. He doesn't know who else the government has spoken to beforehand. He doesn't know, most importantly, who the government is going to speak to next.

But in fact you heard from the witness stand something very probative, that when Najibullah Zazi signed up his cooperation agreement, when he pled guilty and agreed to testify against both of these guys and everybody else, he made a request and he said, government, I'm pleading guilty to a cooperation agreement. Please keep the door open for these two guys to cooperate. Right?

He asked the government to keep the door open so he could speak to Zarein and speak to Adis. If Najibullah Zazi is lying about their involvement in the plan, does it make any sense in the world that he would say please, bring them in and hear them out.

If the defendant is not part of the subway bombing plot, would Najibullah Zazi say, hey, bring him in and hear what he has to say. The only reason he would say something like that is if he believed they would say the same thing he did, which is that each of them is guilty.

Transcript page 853:

Question: When you began to cooperate with the government in February of 2010, did you make any requests of the government?

Answer: I said I'm going to cooperate but I want you to leave the door open for Adis and Zarein to cooperate.

To claim that he is falsely implicating the defendant in these crimes is ludicrous.

There was some discussion that his tears when asked if he still cares about Adis were false, that they were crocodile tears. I submit to you, we don't particularly care -- I say we -- I am saying everyone here doesn't particularly care what Najibullah's feelings are. Nobody cares if he has hurt feelings. Nobody cares if it pains him to testify against his friend or not.

But if counsel believes those tears were indications of something other than being upset that he has to testify against somebody he cares about, if that's the argument, why not explore it?

You've heard and you will hear again that the government has the burden of proof in this case of proving every element of every crime beyond a reasonable doubt. And we embrace that burden and we carry that burden with pride.

But if the defense wants to test our case, if the defense wants to claim that arguments the government has made don't make sense, by all means, cross-examine. Ask, why are you crying? Aren't you crying because you are making it all up? You could have heard the response. But the defense counsel didn't ask because defense counsel knew, I submit, that that wouldn't have been the answer.

That's the context, this agreement, the order in which these guys came in, who they had to testify against, who they had to cooperate against, that's the context in which to evaluate their credibility. Not do you trust them to take care of your kids, do you trust them to be good people.

The context is, if they lie they lose everything and they have no motivation to add anyone else.

That's the context when Najibullah Zazi testifies that there was a meeting outside the Abu Bakr Mosque in 2008, in August, between the three of them when they agreed to join the Taliban.

He knows this guy can come in next. He knows this guy can come in next. He asks that to happen.

In fact, Zarein comes in next and he says the same exact thing, without having talked to Najibullah.

When Najibullah Zazi testifies that the three men go to an Al Qaeda training camp in South Waziristan in 2008, they all know it's Al Qaeda. They all receive training.

He knows and he believes that Zarein Ahmedzay could be the next witness, could have been the witness right before. He can't make that up.

When both Zazi and Zarein testify that the three of them agree with Hamad, four people here, to conduct a martyrdom attack against civilian targets in New York City, they cannot risk lying about that. They cannot risk it.

If the defendant is not part of that, and Najibullah Zazi says he is, and Zarein comes in and says he's not, or the defendant comes in and says he's not, he's not getting his 5K and he knows that. There is just no benefit whatsoever to saying it.

When they testify about their meeting at Kissena Park in the spring of 2008, and they both testify that it was the defendant who suggested doing this attack Ramadan of 2009 -- in the spring of 2009 -- I apologize -- and say he suggested ram Dan 2009, when they both tell you from the witness stand it was the defendant who suggested you use the basement of the apartment building where I work to build the bomb and you know they have not had a chance to talk to each other, that's probative evidence that they are telling the truth.

There was some suggestion just now by counsel that Najibullah Zazi said something else about what happened at Kissena Park, that he said he talked to Zarein about acetone peroxide. That actually was not the testimony. Again, let's focus on the facts, let's not focus on suggestions.

Read back anything you want when you are in the jury room but page 743 of the transcript, counsel asked -- counsel asked on cross-examination:

Was it at that meeting at Kissena Park where you and Zarein had the conversation and agreed to keep distance from Adis?

And Zazi said, I'm not sure if it was that meeting. I was with him on separate time. During that particular trip, yes.

When you evaluate the testimony ask, has counsel been careful with the evidence? Has counsel related the facts accurately?

Discussion of the Bear Mountain trip. We just heard in summation from counsel that there was some kind of plenary meeting session, like the United Nations, everybody sat down and talked about this plan.

That wasn't the testimony. The testimony was that Najibullah Zazi was at the Abu Bakr Mosque and heard off-the-cuff that Zarein and other people were going to Abu Bakr Mosque. Withdrawn. To Bear Mountain.

There was no discussion of keeping Adis away from Bear Mountain. There was no discussion about preplanned meeting at Bear Mountain. That is not in the record because it didn't get testified to by an actual witness.

In the same vein, you heard again a discussion regarding explosives at the Muslim center in Queens. That never occurred in the testimony. It was asked about on cross-examination three or four or five times. But the witnesses were consistent every time.

The acetone peroxide that Najibullah Zazi brought from Denver he gave to Zarein when he first drove in off the bridge and Zarein brought it upstairs.

They discarded the other items, including the hydrochloric acid, goggles and other things at the Muslim Center but not the explosives.

There were a lot of questions about that, I submit, to make it sound like they were throwing explosives in the Abu Bakr Mosque and endangering people but that was never the testimony.

(Continued on next page.)

BY MR. BITKOWER: (Continued)

MR. BITKOWER: And when you evaluate the witness credibility, I suggest look at the way they talk to the Government on direct and the way they talk to the defense on cross-examination. Okay. There was an instance of cross-examination I submit you may remember, which will come up again, when we get to the training camp discussion where Zarein testified on direct that they went to the training camp, in south Waziristan and it took, the training took about seven to ten days. A week, week-and-a-half, okay?

On cross-examination Counsel said that's not true, is it?

And the witness said that's what I remember, seven to ten days.

And Counsel that, that's not true, you spoke to the FBI, didn't you? You told the FBI it was five days, didn't you? All right.

Counsel went to is binder, a big Perry Mason moment, witness said no, I don't think I did tell the FBI five days. And Counsel says well, didn't you tell the FBI it was, and then we all paused, and the question was, five to seven days; right?

That was the inconsistency that Counsel found in Zarein's testimony. From the stand he said seven to ten days. He was impeached that he had perhaps said to the FBI before five to seven days. Okay? Who's lying there? I submit nobody's lying. Five to seven, seven to ten, are both approximations. Five and five to seven are also close. Okay?

For what it's worth, when the defendant was asked how long the training session was, he said two weeks, okay?

And when we're talking about testing the testimony and the evidence to see if it's accurate to use cross-examination to see if the witness' story holds up, you observed firsthand the skill, the competence, the preparation, the hard work that went into each of these cross-examinations and we should all be grateful for it, frankly. Okay?

If the defense is going to say that these two witnesses are lying about what happened at the meeting in south Waziristan between four men when supposedly Najibullah and Zarein said they would do the plan and the defendant didn't, why not ask that? Why not ask one of the cooperating witnesses well, remember didn't Adis say no? That moment never happened in this trial. To either witness. Okay?

When we're talking about whether the defendant truly intended to kill people in Afghanistan or just to go to the Taliban Woodstock love-in ceremonies they were having, okay, why not ask did Adis intend to kill people? That never happened in this trial. Ever. Again the burden is on us, we don't object to that.

MR. GOTTLIEB: Your Honor, objection.

THE COURT: Overruled.

MR. BITKOWER: But if they're going to claim that the evidence is not tested, take the opportunity to test it.

The only question about Messina Park, by the way, other the question, which I submit mistook what happened on which meeting, the only question about Messina Park was do you have proof of what happened? Did you tape, did you write, a file after you set up the meeting? That was the question on cross-examination, okay? I submit it's good lawyering. I submit it's not helpful if we're trying to find out the truth here.

And Counsel, Counsel suggested I would say this, and I will say it. They want to say that the Government needs to rely on Zarein and Zazi to convict the defendant. That's actually not true. Okay? Imagine you never heard from Najibullah Zazi and Zarein Ahmedzay in this case. They never testified. The evidence against the defendant without these two men is overwhelming and he would being guilty of every count in this indictment without these two men. How? His confession alone proves all of the elements of many of the counts of the indictment.

He admits he traveled to Pakistan to join the Taliban and kill U.S. soldiers in Afghanistan. He admits instead he went to an Al-Qaeda training compound and received instruction on firearms and grenades. And he admits in his confession that after the talk with Abdul Hafeez, he agreed not to do a suicide bombing, but to come back to the United States as a sleeper agent, send money back to Al-Qaeda who he knows does suicide bombings and recruit for people, okay? That's his story.

And the confession -- that story, by the way, if you choose to accept that version, also makes him guilty of providing material support to Al-Qaeda and conspires financial support to Al-Qaeda. That confession is corroborated by independent evidence.

You heard from Zakir Khan, okay? Zakir Khan came in and he testified the defendant was an older role model type at the mosque, at Abu Bakr as were Najibullah and Zarein, and he told me that suicide bombing was okay. It was a good tactic. And he recruited me, with the other two guys, to go to Afghanistan and fight with the Taliban, okay?

And he wasn't asked a single question on cross-examination. And Counsel tells you now, in summations, that he was telling the truth. The travel records show the three of them went together. His confession says he met Abdul Hafeez. You heard from Bryant Vinas who Abdul Hafeez is. He is the Leader and the chief of Al-Qaeda's external operations branch. Okay? You know that takes care of every count, by the way, except for the ones related to the bombing in New York, what I've just mentioned.

You still haven't heard from these guys (indicating). You know there was a bomb plot in New York to attack the New York City subway system. There's no doubt about that in this case. Defense says it. Government says it. You know it without hearing from these witnesses because you saw the bomb notes that were on his computer, you saw the E-mails back and forth to Pakistan, the marriage is ready. You saw that there was acetone residue in the stove where he stayed at the hotel. You saw the car rental records and you know that he was driving to New York for September 10th weekend, in 2009, after staying at the hotel where the acetone residue was. And you know from the bomb records that that's a component in acetone peroxide. And you know that he then flew back, Najibullah, then flew back on September 12th. You've seen the phone calls. You've seen the surveillance that puts the defendant thick with these two, while they are plotting, what you know is an Al-Qaeda bomb plot.

So, is the defendant involved in that without hearing from these two (indicating).

Well, you saw the car crash. You heard the 911 call. The defendant actually did try to conduct a suicide attack, in Queens, and shouted an Al-Qaeda slogan in case there was any doubt as to who he was doing it for.

I submit that without hearing anything from Najibullah Zazi or Zarein Ahmedzay, that's a pretty good case if you're guilty of every single crime in the indictment. But you did hear from Najibullah Zazi and Zarein Ahmedzay and everything they told you was consistent with everything else you've already heard with the sole exception, which I'll talk about in the second of the defendant's lies. But everything else is consistent. Together the independent evidence plus not one cooperator, but another cooperator who has not spoken to him in a year, is overwhelming evidence.

Let's turn for a second to the discussion of training. Because I submit that a lot of you are probably sitting here really confused by the defense argument about how the defendant didn't receive training. And I submit that confusion hopefully will be lifted when you hear the Judge's instructions because what Counsel told you was not true. What Counsel told you about the law and the requirements was incorrect. And you'll hear it from the Judge. If I say anything different, as Ms. Berger said, as Mr. Loonam said before, ignore what I say. But you are not going to hear, in the law covering training, that there is any requirement that the training be conducted for a particular purpose. There is no requirement that the training be used later on in furtherance of a crime, that's not part of the law, that's not part of the crime. The crime is receiving training from Al-Qaeda. With knowledge that Al-Qaeda is a terrorist organization, okay? And there doesn't appear to be any dispute at this trial that everyone knew Al-Qaeda is a terrorist organization.

There is no requirement that training be a month, a year, five days, ten days, seven to ten days, whatever. Again, the defendant's memory is that it was two weeks. I submit the defendant was guilty of receiving terrorist training -- withdrawn.

Receiving military type training from Al-Qaeda in approximately 45 minutes of getting to that camp. This isn't a close call, okay? Military type training is not a technical term. It means training in the methods that can cause death, training in the use or assembly of firearms. That's it. The moment they hauled out the white board and Youssef started telling them, even before the guns came out, I submit, they were trained on methods that can cause death and use of the Taliban firearms. And then you heard they handled the weapons, they learned how to take them apart, put them back together, learned the Arabic term, the English term and then at the end of it, they got to fire everything. Okay? That's training.

There was very substantial and potentially, I submit, confusing discussion that they didn't receive the same training that Sajid Badat received. Sajid Badat you know from the testimony was trained in Afghanistan ten years ago. When Al-Qaeda effectively ran an entire country, when they had the run of the place, when they had training camps there. For years. So, we don't dispute that Sajid Badat received a longer training than the defendant and his co-conspirators, okay? It doesn't mean the same training Bryant Vinas got, it doesn't mean any of those things. It means they learned how to use a firearm. I submit they learned that instantly. There was an analogy to fantasy baseball camp and if you went to fantasy baseball camp, would you be guilty of receiving training? Well, I submit that if you went to Al-Qaeda fantasy baseball camp and it was a crime to receive baseball training from a terrorist organization, yeah, you would being guilty, okay? It's not a crime, it's not charged here, but if that's the analogy, then yeah, he's pretty guilty.

You heard from Kirk Yaeger, bomb expert, that he could train someone how to make acetone peroxide in an hour. Training doesn't have to be a week, a month, a day, a year. Doesn't have to be for any purpose at all. You know from the other evidence that this training was for another purpose. You know the reason these men wanted to get training was so they could use it on the battle field in Afghanistan against American soldiers. That's been proven as well, it's just not part of this count.

There was a further discussion that because they had -- Al-Qaeda did not want these men to fight on the battlefields that the firearms use was therefore not related to this training. Again, listen to the law. Okay? Listen. Again, listen to what the actual statute requires and what the actual elements are.

If the defendant used a firearm in relation to his training, he's guilty. Even if we pretend that he didn't want to use it on the battlefield, and it wasn't related to his conspiracy to commit murder. Even if we pretend that that's true, he's still guilty of the purpose of the training.

If we assume that Al-Qaeda secretly didn't want these men to go into the battlefield, that doesn't make them not guilty because you know that they -- you know that they wanted to use these weapons in the battlefield, so they're guilty of that firearms count as well.

Let's talk a little bit about the bomb plot again, it's a lot of talk of surprise. Here I submit you may have been surprised about what the defense is. You may still be confused by what the defense is because the defense apparently wants to have it every which way, okay? I didn't do it, I didn't do it, I didn't agree, I didn't do a bomb plot. But if I did, I was brainwashed. Or I was forced. Or I was too scared. Which is it, okay? Let's start with the brainwashing.

You know that the defendant was not forced or brainwashed into agreeing to do a suicide bombing, how do you know that? Number one, there's no such thing as brainwashing.

That's what happens on Gilligan's Island when the coconut false on his head or something, it doesn't happen in the real world. It doesn't brainwash him in a week of watching videos that are taken off the Internet. That's absurd. Okay? You can't just say something and have it be true. There's no evidence of brainwashing, there's nothing to support that, okay? And if a witness colloquially uses the word brainwashing, that's not a defense to a crime.

If the defendant knowingly and intentionally did these acts, he's guilty and there's no brainwashing defense, okay?

Second, let's pretend there was such a thing as brainwashing. Let's pretend that there was some evidence that these men were forced to do a suicide bomb plot.

Does it make any sense to you whatsoever that Al-Qaeda would force three men to do a suicide bomb plot in Waziristan and then send them back to the US? How long would that force last? Would it last until they got in the taxi on the way back from Waziristan? Would it last to the police station that you heard about? Would it last past when they got to the airport? Would it last past when they got to the United States and were interviewed by the Custom guys? Right? Would it last that long? Would this last once they got back home if they were forced to do a plot? Would that be a good tactic for Al-Qaeda?

The one thing you heard about Al-Qaeda in this case over and over again is they're not new at this game. They're not rookies at trying to attack the United States. They've been doing it for a decade. It doesn't make any sense, it's frankly absurd to suggest that they effectively kidnapped three Americans and forced them to do a bomb plot by sending them back to the US. It doesn't make sense, okay.

And you also know he wasn't forced or brainwashed because he told Agent Azad that he loves Al-Qaeda. That he loves Osama bin Laden more than himself. That he told Zakir Khan that he's a forced suicide bomber, so doesn't make sense he was forced to do it. By the way, while we're talking about loving the subject of loving Osama bin Laden more than himself, there was cross-examination, there was some suggestions that that wasn't in the handwritten notes of Agent Azad. That the defendant said that he loved bin Laden more than himself. I submit to you it wouldn't matter if it wasn't in there any way because you heard from Agent Azad the way the reports are written is that notes are used to jog their memory and you don't transcribe entire notes. But in any event, it doesn't matter because you also heard the testimony that it was in the notes. So, when Counsel says it wasn't, check the transcript.

And in any event, even if he had been forced or brainwashed, you know that this plot continued for months in the United States when there were no armed Al-Qaeda henchmen around to scare people. They were in Messina Park, in Queens, all right? Now, not saying he wasn't forced or brainwashed, but this is where we jump to -- but he didn't do it. So, what happened? What happened? Did he agree or did he not agree? We don't know. One minute we're being told pressure, pressure, they're being forced to do it, they're being brainwashed by the videos. And the next thing you know he apparently says he didn't do it. Well, that doesn't make any sense. If there was so much pressure, then how do you not do it? If he didn't do it, how was there so much pressure? This is sort of like the missing step in the story and, you know, we hear pressure, pressure, brainwashing, brainwashing, mumble, mumble, he didn't do it. The account doesn't make any sense. Doesn't hang together, it's not coherent, okay?

You know from all the evidence in the case that the defendant agreed to do it, okay? The evidence is so overwhelming, I'm not going to repeat every element of it, but here's a list of seven reasons that I came up with that you know the defendant agreed to conduct a suicide bombing attack in the United States, okay?

Number one, the most obvious, you heard it from his co-conspirators. There were three of them, they all agreed to do it. You heard from Najibullah Zazi I always knew there would be three bombers. I made enough detonators for three men. We were going to build three bombs for me and my two friends.

You heard from Zarein that he had been with the defendant in New York consistently in contact from January 2009 up through September and they had talked about this plot and he never had any doubt. If the defendant was committed, in fact, in fact, when Zarein was not committed, it was the defendant who encouraged him to forget about his family in Afghanistan and go forward.

And by the way, you heard that wasn't months later. The testimony shows that was in January, okay? That's just one reason.

Number two, it's corroborated. It's corroborated by the independent evidence. It's corroborated by Zakir Khan the defendant supports the idea of suicide bombing, don't get us wrong, that alone is not a crime to think suicide bombing is a good idea. Anyone can think that. Can't be convicted just for thinking suicide bombing is a good idea. But I submit it tends to show that it's more likely that the cooperating witnesses are telling the truth when they say he agreed to do a suicide bombing if he supports suicide bombing.

If you support bank robbery, that's not a crime, but if someone says you're a bank robber and someone else says you support bank robbery, it tends to suggest that maybe you are guilty, okay?

Three, even if you accept the suggestion that he said no, somewhere in that mumble, mumble section that he actually said he wasn't going to do it, he maintains close continuing contact with the other two bombers the entire period when they get back, okay? And we'll get a little more detail into the falling out argument later, okay? But you know, without a doubt, those two men are planning to blow themselves up on a subway train in September 2009. You know he was there with them. That's part of the defense and he stays in close contact with them. Calling in the morning, seen at the mosque together. He knows what's going on. If he's not doing a suicide bombing attack, if he has some powerful reason to be against this, what's going on in those conversations? I submit those conversations aren't happening because, in fact, they're in on this together.

Number four, you know, and it's been overwhelmingly proven that the defendant deleted the text message where Najibullah Zazi told him on September 4th, he was coming to New York, okay? Again, in closing, Counsel misstated the evidence, okay? There was no testimony that the billing company gets it wrong and misses something, and it, therefore, gets deleted from your cell phone, okay? Everyone here has a cell phone. The billing company doesn't go in there and delete your stored text messages, you do. The only testimony was that if the phone runs out of memory, the oldest ones might get deleted.

Well, you saw in the evidence, in the defendant's cell phone report that there were still text messages from August. August 27th and one from September 5th. So, you know when you use your common sense that the defendant deleted the one on September 4th. Why just that one? You also know why he did that because he knew that Zazi Ahmedzay was coming to do a suicide attack.

Also on that note, there was a little discussion how could the defendant be in on this plot, how can he be in on it when he didn't destroy all the evidence on his computer? You also heard that the defendant actually had his hard drive wiped in August and so there wasn't actually all that much on it. And most of the items had actually been deleted and I'm not suggesting that was in furtherance of the plot or not, but you know that in September when he found out the police were on to them that he actually had his hard drive erased about a month earlier, on Page 1032 of the transcript.

Next reason. You know what the defendant is doing on September 8th and September 9th. Okay. What he's looking at, what he's watching. All right? You know from the search of his hard drive, from the search of his apartment -- his bedroom in the apartment, that he's watching as-Sahab videos about Al-Qaeda memberships, fighting in Afghanistan. You know he's watching a picture, he's looking at a picture of a burned out car. You know he's looking at photos of Sheikh Faisal or actually an audio file of Sheikh Faisal talking about how you have to show patience and do whatever the Amir says when you're in the camp. That's what he's looking at and listening to on September 8th and September 19th.

There was discussion on Counsel's summation that you only heard that it appears on your screen, you didn't hear he looked at it, he might have been completely flummoxed by the appearance of all this radical stuff on his computer. He was probably just searching for Lord knows what, sports scores or something. You know that's absurd. Everyone uses the computer. Jihadist videos don't just appear on your screen, okay? And if they do and you want to get rid of them, you probably don't see two, three, four, five more. That's just not how it works. And use your common sense on that one.

How else do you know the defendant was part of the plot? Look at his false denial, look at what he said in his post-arrest statement. False denial, I submit, tells you what he's actually hiding. Two things he denies. One, he denies that they talked about targets in the United States. He says, he to Agent Azad that the four of them did talk -- not the four of them, they talk with Abdul Hafeez, I'm sorry, about suicide bombing targets but they were all in Pakistan and Afghanistan, okay? You know that's false. You know that is a lie, right? You know that Zarein and Najibullah both could not have come in and independently said we talked about Brand Central, WalMart, stock exchange, the subways and both been so close in their recollections of what was discussed, if that's not what happened. You know that.

You also know from Bryant Vinas that Abdul Hafeez is the chief of external operations which is targets against the west, so you know that they're not just sitting down with Abdul Hafeez talking about targets in Afghanistan and Pakistan. That's not his job. They don't know that. Defendant doesn't know that. Even you know that.

The reason, I submit, that he is lying about where the targets were is because they were in the United States and because he felt guilty about that because he knew he had actually agreed. That's why he lied, okay? The second lie is that they agreed to do the attack. He denies that.

Defendant tells you, in fact, they wanted him to do it, everything the cooperators say is true, pressure, requests, but he said no, I'm not going to do the attack. What I'm going to do is go back to the United States and raise money and send you recruits, okay? That's his story. That makes zero sense, I submit. Zero sense. The defendant is a doorman who makes $200 a week, okay? He works hard, there's nothing demeaning about the job, but if you're going to choose a man to raise money for Al-Qaeda, are you going to choose someone who makes $200 a week and lives with his parents? Is that your choice?

Number two, he says he's going to send recruits back, okay? Does that make sense? He's best friends with these two guys who we know said they were going to do the attack, who the defense agrees said they were going to do it, but he's going to go and lie low and then after they blow up the subway, he's going to somehow be unobtrusive and recruit other to Al-Qaeda. Does that make any sense? Of course not. Of course not. They all flew together. Obviously linked. Make no sense for Al-Qaeda to choose him as a recruit. So, why does he lie about that? Because he didn't actually say no. That's why.

And finally, how do you know that he agreed to do a suicide attack on the United States?

Because he tried to do a suicide attack in the United States. Okay. And you know he tried to kill himself. You know he tried to use the car to do it. You know he hit somebody else and tried to kill them. He told Agent Azad his goal was to create a fire bomb of some kind that would kill lots of people and you know, just in case there was any ambiguity, he left a message with 911 saying we love death more than you love life, which we all know is an Al-Qaeda slogan.

The defense argument here was that well, Zarein temporarily didn't want to do it, he didn't tell anybody, right? He temporary was going to listen to his wife and not do this attack for a period of a couple months at least and he didn't tell Najibullah. So, how do you know the defendant didn't secretly not want to do it and not tell anyone?

Defense said there's no reason to not announce it, okay? Announce what? Announce what? The argument doesn't make any sense. There's no reason for him not to announce what? If he said no in the training camp, then there's nothing not to announce, because he said no. There's no secret. But if he's being secretive, then doesn't that suggest that he said yes in the training camp? You can't have it every which way; right? The story has to make sense. The evidence has to fit together, and the defense version simply cannot.

I submit to you, as well, when you hear the law from the Court that even if you were to believe he changed his mind at some later date, that wouldn't mean he's not guilty of the offense of conspiring to commit this attack, but you also know he didn't change his mind.

(Continued on following page.)

MR. BITKOWER (Cont'd): The other major argument for why the defendant didn't actually agree to do this is because of the grand falling out, right? They all hated each other, fists were flying, people were arguing about how to drink tea, how to dip their bread in the sauce. There was the question on cross examination of Najibullah Zazi on page 725 of the transcript:

Question: And when we say fight here, we are talking about a physical battle, correct?

Answer: Very short physical fight, yes.

The punch heard around the world apparently ended this extensive friendship according to the defense; not according to any of other friends who all seemed to still believe they are all friends, not according to Najibullah, not according to Zarein, not according to the defendant who tells CP Officer Harris on September 25th.

Page 341 of the transcript: I travelled to Peshawar, Pakistan for three week with my friend Zazi who I have known since high school in Queens.

Now, according to the defendant when he tells Agent Azad that Najibullah Zazi is 100 percent good guy, he initially tells Agent Azad he barely talks to Zazi and Agent Azad says you know we can get the phone records? He says: Well, maybe ten, fifteen times a month. Not according to the phone records.

Now, we heard all the cooperators were lying. We also heard the phone records were lying which is a new one, but let's exam the allegations, all right? All of these calls from January to September of 2009, February 4, 2009 through September, okay, these aren't -- again these aren't magic. This isn't a videotape of people committing crimes. This is just evidence that the defendant can't change and has to argue around, and they show continuing and frequent contact. Okay, we don't know that was said in these conversations except for the two pocket dials. We don't know about that. We don't know what was said in any of them. We don't know if a couple of them were hang ups. Some of them may been voice mails. Some of them may have been missed calls. No one ever said otherwise. No one pretends otherwise, but it is close and continuing and frequent contact and just ask for Government Exhibit 173 when you deliberate. All right, there was a claim that all the calls are from Adis to Zarein because he's a lonely guy and he's been frozen out. That is just not true. That is not just not true. Plenty of calls to Adis from both Najibullah Zazi and Zarein. Look at the actual evidence, all right. Not the insinuations.

There was discussion zero calls between Najibullah and Adis before the first few months when he gets back from Pakistan. He's been frozen out. Again, let's look at the actual evidence in the case which is that the agent who did the phone record analysis simply did not have tolls for Najibullah before March 17th of 2009. Didn't have tolls to analyze and put them there. Not that they didn't talk, not that there is a phone out that shows those records. Didn't have it analyzed.

The suggestion is these calls are nothing, that they were nothing. All right. They ar not evidence of friendship. At 5:03 a.m. you got a call from Najibullah to Zarein. I'm sorry. Let me move to June 2009. These calls, you know, when this is? When Najibullah is flying to New York, this is when they meet in Kissena Park. These phone records corroborate they met at Kissena Park because all three men were talking during this period. Same thing August 2009. This is when Najibullah came again. The suggestion was they are on the outs, they still hate each other, they don't talk. This chart just proves that false. Suggestion is we don't know what they are saying on the calls. We have got calls here 5 a.m., 4 a.m., 6 p.m. what do we think is happening month after month? Hey, there's a call, right. Here's a call from Adis to Zarein February 25th, shortly after they get back from Pakistan, what are they saying? Hey Zarein, this is Adis, just want to remind that we had a falling out and we can't talk and Zarein called back, yeah I agree with you. We are not talking. Next day. What's happening. Oh. Adis again, still hate you. March, April, May, and it is just absurd, it is an absurd argument. Phone records are lying? The government is disputing the phone records?

The suggestion is all these pocket dials, the government hid the pocket dials from you. Great moment. The defense counsel discovered the pocket dial and showed you the government was deceiving you and tried to fool you. That is not what happened at this trial. When the phone record expert testified Najibullah already testified about those pocket dials. They weren't put in this chart and said these pocket dials were long bomb-making conversations. That evidence was before you already. The suggestion that the government hid that somehow is absurd because you know they got the reports of everything Najibullah Zazi said. You know that. You know Najibullah said there's a pocket dial, that the defense knows that. That is not being hidden from you. The argument is absurd.

Let's move on to the first thing the defendant argues which is he didn't agree to commit murder. He agreed to join the Taliban but he wasn't going to kill anybody. He wasn't going to kill anyone. That defense was basically he did it because he didn't plan to succeed. Right. He planned to fail. Planned to join the Taliban which is undisputed was fighting again American and NATO and other coalition servicemen in Afghanistan. He went there. The evidence is overwhelming that he knew they were fighting. He knew they were fighting against Americans and their goal was to kick the American out of Afghanistan. The evidence is that they watched videos, these three men watched videos. They knew the Taliban needed weapon, AK47. They don't need to actually watch a video to know that. That is commonsense but his goal was not to kill the Americans, it was just to protect the Muslims by kicking them -- the Americans out of Afghanistan, right? What does that even mean? That is bizarre. The argument doesn't make any sense. He wants to join a fighting group that is fighting against Americans with weapons and help them succeed in their goals but he doesn't want to kill the Americans, and counsel pointed to some of the testimony of cooperators to suggest that the government has to sort to force it out of them that they are going to kill people, that this is not the plan at all. The plan was just to join the Taliban. Period. Full stop. Join. Get you membership card. Go to the health club or something. That was it. No killing.

Counsel quoted from page 89 and 90 of the transcript. Direct examination by Ms. Berger of Zarein:

Question as quoted by the defense counsel line 18 page 89 (reading):

Did you Najibullah and the defendant discuss the possibility of dying during this fight?

Answer: Yes.

Question: What was your thought on that?

Answer: My thought was that we were going there for two reasons, and we referred to as victory for Shahad (ph).

Okay. And then counsel turned the page to 90. Jumped down to line 13 and said:

What did you think you would kill -- you may remember that, that was about and hour and a half ago, two hours ago -- what did you think you would kill?

Answer: The American forces, the other foreign forces and the Afghan forces.

And counsel said to you here, just in front of you two hours ago, why did go the government have to lead them if this is true. Remember that? Two you are as ago.

Again, be careful with the record. Let's state what happened. The we had a trial. This isn't Star Trek. You just can't make something up and have it be true. This isn't Harry Potter. Counsel skipped the preceding questions.

Question line seven: Did you, Najibullah, and the defendant discuss killing others?

Answer: Yes.

Question what was your thought on that? Answer -- an open ended question: What was thought?

Answer: My thought was that we would have to again kill others and also be killed possibly.

And only then did she ask: Who did you think you would kill.

The suggestion that these witnesses were shy about saying they wanted to kill is, again, not just absurd, but also, inconsistent with what happened in this trial.

You heard the same thing from Zakir Khan. They were going to fight. Not just join the Taliban. Fight with the Taliban. The suggestion, oh, they were going to do whatever the boss told them to do to help the Taliban. If the boss said you can't kill, then they weren't going to kill. Right? That is the argument.

If the Taliban is trying to win in Afghanistan by ejecting American forces, then I submit to you that if you follow the order of the Taliban commander to blow up the gas tank in the truck, load the weapons, cook the food, clean the latrines, you are helping the Taliban kill the people they are going to kill; otherwise, probably the Taliban commander wouldn't tell you to do it. In any event, the defendant told you he didn't want to clean the latrine, he wanted to become, as he told Agent Azad, a great general.

This wasn't a field trip. This wasn't for a term paper. The defendant didn't think that the American Army was going to surrender when they saw the three kids in New York. Guns, no, don't kill me. I'll volunteer. You win. They weren't planning to miss when they fired.

The defendant told Agent Azad, transcript 1141:

I did not get the chance to shoot Americans. And no question on cross as to whether that was in another time. Nobody asked that question.

You know it is true.

It is like if you said, hey, I want my neighbor's new Cadillac, I love that Cadillac, I really want it. You say, well, he is going to give it you? No, it's a brand new car. He's not going to give it to me. Are you going to rob it? Yeah. I am going to steal it if I have to. I am going to go steal it. He's not going to give it to me, right. What's my goal? My goal is to get the Cadillac. That is what they are saying, the goal was to join the Taliban. The goal's wasn't to kill. Join the Taliban and get the Americans out of Afghanistan. If I want to the Cadillac, then I am going to take it. Then I am going to steal it. Right? Then I'm guilty of trying to steal the Cadillac, and if the Commander who runs the Cadillac stealing operation tells me my job is not to steal the Cadillac but to do the lookout or research the police patrol schedule, I am still guilty of conspiring to steal the Cadillac, conspiring to commit theft even though my goal is just to have a lovely Cadillac.

There is also a suggestion that the defendant is not guilty of this count because soldiers of the United States, when they go off overseas are not murders and that is absolutely right, they are not murderers. The defendant is not a soldier as much as you know he wants to think of himself as one. He is not. Doesn't work for a government. Doesn't work under a lawful authority of a government to use deadly force, not a police officer, doesn't have that power to make those decision. If he goes and joins the Taliban, an illegal fighting force and they kill people, that's murder if they do it deliberately intentionally and you know that was his intent.

Moving on the defendant's statements. All right. There was a suggestion in cross examination that the sometimes might not have been voluntary but that doesn't appear to be the defense any more. The argument is simply that Agent Azad is lying, cooperators are lying, the phone records are lying, FBI Special Agent is lying. What is he lying about, by the way? He is lying about three things, three things, and that whole confession you heard it is a 16 page report that he did of an interview with the Detective Carney, Detective Maysonet, Detective Murphy, you heard Special Agent Pannetta was in the room later, you heard there were other people around, but in that whole report he lies about three things, the whole testimony about the statement.

Number one. When the defendant told you he wanted to fight and kill, right? The argument is that he threw in and kill because it wasn't in the notes. We heard what notes are for. They are not transcripts, and in any event, it is so painfully obvious, I submit, that the defendant wanted to kill people that it doesn't make any sense that someone would throw that in or lie about it.

Second. He lied about whether the defendant said he loved Osama Bin Laden. We heard from the transcript that is in the notes, so presumably he knew he was going to lie about it back in January of 2010 if that would be a big deal.

And third he lied about FBI policy about videotaping interviews. Counsel told you in no uncertain terms, you know that is not true, that FBI policy doesn't videotape interviews, you know that is not true. Counsel even believe that? What do you do think? Pretty big accusation that the Special Agent of the FBI got on the stand and committed perjury in this case perjury in this case about FBI policy?

The government called 23 witnesses in this case who worked for the FBI or Joint Terrorism Task Force in New York, Denver, Washington, D.C. If counsel thought testing the case would show that Agent Azad is a liar you'd think maybe ask somebody else what the policy was? The FBI Agent testified after. Absurd. Absurd. Agent Azad is committing perjury, is starting to risk everything and throw it away, three other agents, detectives in the room in a case about two words in a case with overwhelming evidence on every count of the indictment? That make any sense to you? Lying about the use of the word killing in a case where the defendant is so incredibly for no reason.

THE COURT: Close to wrapping it up?

MR. BITKOWER: I am, Your Honor, about five minutes.

There was a suggestion here that the government has behaved-- I think it was, quote, disgracefully in the treatment of cooperating witnesses. You heard that. Then, most important thing in this argument is it has absolutely nothing to do one way or the other with the defendant's guilt or innocence. The cooperating witnesses get hundred bucks a month for commissary expenses. If they get $1,000 a day. It doesn't make him any more guilty, any less guilty. It's completely irrelevant.

There's a big deal made that the government didn't force the cooperators to plead guilty to certain crimes they are going to dismiss, certain other crimes. Didn't make them plead guilty to getting military training. Just not charge them with medicaid fraud. All right. You heard the argument doesn't make any sense. You heard they pled guilty to life. A judge gets to decide what sentence they get between zero and life, and the judge is going to know everything they did. So could they have pled guilty to another count, ten counts, 20 counts? Sure. Would it have made any difference of any kind what for their incentive? Absolutely not. Their punishment I submit it wouldn't.

Two nights of proffers we prosecute Najibullah's dad. Prosecuted his cousins his belief is, whole family had to go to the grand jury. You heard the government is the one who prosecuted these cooperators, put them in jail and that's a sweetheart deal? You can agree, you can disagree. The government's decision in this case, you can disagree with how the government handles these witness. That is your prerogative. That has nothing whatsoever to do with whether the defendant is guilty of the crimes charged in the indictment.

You heard about the 911 call. This is after the phone records that the FBI cooperators and whatever else. It is a call where the defendant actually picks up the phone, called 911, says who he is, and says that he loves death in a deliberate attempt to echo an al-Qaeda slogan that, you know, he learned about in the training camp, and this was sort of tour de force of counsel's performance I submit where we heard about the actual things that happened in September when Najibullah was arrested, and the defendant's family's apartment was searched, which I would submit and agree was probably terrifying for the family members, September 14th. And then the argument is that October, November, December January, four months later, all that pressure from September caused him to explode in this panic.

Did you notice that nothing happened in October, November, or December during that performance? Nothing. Right? You heard all this is a major media event. Where was the evidence of all the media in October, November December? Where did that happen in this trial?

You heard about that pressure, and the net closing in. We were in sort of full science fiction mode. There is just no evidence of that in this record. The evidence is the defendant's house was searched again in January, four months later. Two agents came in, worked alike. Took their shoes off before entering. Said they have a warrant for the passport, didn't ransack anything. Said if you bring us the passport we will take it, we will be on our way. The defendant said did you call my attorney? Said no, but call your attorney if you want.

The evidence is then they left. The defendant called his attorney, had the presence of mind to do, and no evidence of panic, and then what did he do? What's the evidence of the panic and the pressure and craziness going on there? He told his sister to go back to sleep. Said, Alysa, go back to sleep. Right. You don't need to be around for what happened next. It wasn't panic. Calm. This was rational, just as when he went to Pakistan in September -- August 2008. He didn't tell her what he was going to do. Just as when he lied to his family before. He said go back to bed. All right. He then got in the car, drove 90 miles an hour and again had the presence of mind to make martyrdom tape without a video camera or someone else there by calling 911.

I submit to you there was zero chance -- zero chance that he thought of that for he first time at that moment. You know that ever since Najibullah was arrested, ever since that moment, they didn't have a bomb, he was thinking of what he would do. This wasn't panic, ladies and gentlemen, this was premeditated and calculated. He had told Zarein long before what he was going to see in his martyrdom tape, what he was going to say. He had been thinking about it. Thinking about it for months.

I submit he also thought of how he would do it and when he got in the car he wasn't panicked. It wasn't -- I can't remember the characterization by counsel -- words come to your mind: Power to the people or Maxwell's Silver Hammer or whatever it is, it just didn't come into his head, right? This is something he'd been thinking about since Waziristan, and you know that because you saw the video. They were showing Waziristan where Shazad (ph) came here, the London suicide bomber, said the same exact thing, and you heard from Evan Kholmann that's the hottest Jihadist phrase that is used frequently by al-Qaeda. That was careful. That was not panic, and you know it wasn't panic because once he got out of the car and it hadn't worked -- when his plan to finish up hadn't worked, he talked to Agent Aaron Spivack, the surveillance agent, and he says -- by the way, there's zero evidence in the case he knew there was 24/7 surveillance.

Zero. So that part of the mounting pressure is also speculation, but putting that aside, what does he do when he sees Spivack? Doesn't seem panicked. He doesn't seem like he's out of his wits. He goes back to plan B. Talks about religion. Talks, tries to persuade you and then he talks to the agents for hours. You hear he talks about the religion. You hear when Agent Pannetta says it's time to go to bed. It is like 4 a.m. Stop confessing. We are sleepy. He says let's talk about religion. Is that panic? That is not panic. That is a singular focus.

THE COURT: How far into the five minutes are you?

MR. BITKOWER: Four and a half Your Honor.

When you view all of evidence in the case, ladies and gentlemen, I submit to you that there is guilty, and there's Adis Medunjanin guilty. Guilty and so guilty that two of your best friends in the world testify against you for three days, one of them through tears, guilty, and so guilty that you confess for so long that the FBI has to beg you to stop confessing so they can get some sleep. Guilty and so guilty you spend a year waiting to die and figure out what you are going to say in your suicide tape. So guilty that just so there's no confusion you call 911 to announce your enemy, your motivation.

The defendant thought of himself as a soldier. The evidence in this case shows that he is not any soldier. The evidence shows that he is a criminal. When you retire to deliberate in this case I am confident that you will return the only verdict consistent with all the evidence in the case, the only verdict consistent with justice in this case, and that's the verdict of guilty on all counts.

Thank you, very much.

(Continued on next page)

THE COURT: Thank you, Mr. Bitkower.

Okay. It has been a long day. You are going to come back Monday morning and I'll take some time, probably a little more than an hour, to instruct you on the law and then the case will be yours for deliberations. Until then, you don't discuss the case at all. After that point, you only discuss the case among yourselves.

So we have a three-day break. Put the case out of your minds. Enjoy the three days.

Don't go looking for information about the case or cases like it or anybody involved in it. You know this. I'll it will you again anyway.

No tweeting or blogging or speaking to anyone in any way, shape or form about the case. Don't let any information find its way to you. It is important that you respect the need for your verdicts to be based solely on the evidence in case. So continue to do that.

Safe home tonight. Enjoy the next three days. See you all on Monday morning. Have a good weekend.

All rise.

(The following occurred in the absence of the jury.)

THE COURT: Please be seated.

Thank you all.

Before I forget, please prepare, if you would, a copy of the transcript of the testimony without the sidebars and stuff, please. Mr. Loonam?

MR. LOONAM: Yes, Your Honor.

THE COURT: You nodded your head first so I am going to tell you to do it. In case we send testimony in to the jury room, we can do so quickly.

You were standing like you had something.

MR. GOTTLIEB: Your Honor, just very briefly.

I just wanted to put on the record the basis for the objection.

THE COURT: Yes. Go right ahead.

MR. GOTTLIEB: The objections we have are as follows:

Counsel on more than one occasion, one time is one thing, but it was throughout the rebuttal summation, made comments regarding defense counsel could have asked certain questions of a number of witnesses and didn't do it. Indicated that strategy might have been good lawyering but was not to find the truth, or words to that effect. Continued, saying something along the lines, that the defense counsel didn't ask another person a question and he could have when the person was on the stand. He commented that defense counsel could have asked questions about policy, I think in connection with FBI policy from the 23 witnesses.

We object to that. We think that in making comments like that it really has conveyed that there is some obligation for the defense, one, to ask any questions, and it does shift the burden and gives the jury the impression that defense counsel was trying to hide something. In fact, he actually articulated this notion that it wasn't done to pursue the truth.

We think that does deprive Mr. Medunjanin of a fair trial.

THE COURT: All right. Do you want to be heard?

MR. BITKOWER: Sure, Your Honor.

Second Circuit case law provides expressly, unequivocally, that where, as long as the jury is reminded, as they will be in the instructions, and as I reminded them myself, that the burden is on the government, it is perfectly appropriate for the government to call attention to the defense's failure to challenge the government's evidence, especially if it's in furtherance of the defense theory.

THE COURT: All right. There are two components to it. One is an accusation of trying to hide something, and that is just argument.

I am not persuaded that the argument that was made really implicates a burden shifting. But to the extent it does, I am convinced it will be ameliorated by my charge to the jury, that the burden rests on the government.

I am not quite sure what the application for relief was. What was the application for relief?

MR. GOTTLIEB: Your Honor, I think I anticipated that it might be necessary to have a more directed instruction making reference that you are to disregard the government's statements regarding defense counsel, the questioning and not seeking the truth, an instruction when you give the total instructions but clearly directed at what happened would be our request.

THE COURT: All right. We've got plenty of time. So put a proposal in writing. Share it with your adversary and the Court and I'll give you a ruling Monday morning.

MR. GOTTLIEB: Thank you.

THE COURT: All right. Thank you all. Have a good weekend.

MR. LOONAM: Your Honor, I apologize.

I submitted two proposed instructions. Do you want to address those on Monday morning or -- the one on motive.

THE COURT: Hold on. Let me get it.

MR. LOONAM: Yes, sir.

THE COURT: I confess, I haven't read the letter yet.

Do you want to be heard on this?

MR. LOONAM: Very briefly, Your Honor.

THE COURT: No. Your adversary. You've got it in front of me.

Do you want to be heard on this now?

MS. CARVLIN: Certainly, Judge.

Public authority, I don't understand the basis for giving that instruction in the case.

THE COURT: Yes. What is that all about?

MR. LOONAM: During the closing statements, Your Honor, defense counsel made reference to killing is just something that happens when you go to war. Certainly when soldiers go and they get ready to fight, we don't accuse them of murder.

Grouping the defendant together with the service men and women of this country that go over to defend us, and so that's an inappropriate defense. That's essentially a public authority defense that's being made and lumped in. It is confusing.

So they should be instructed in some way that that's not a defense, that there is a distinction between US service men and women and what the defendant is accused of doing.

THE COURT: Okay. Denied.

What's this other one?

MR. LOONAM: Motive, Your Honor, the defense argument has conflated the motive to go over, which was he went over to defend Muslims, which could have been his motive, but it begged the question of how. And the how was to kill US soldiers.

So motive is not a defense. It is separate and apart from intent, and this is a standard instruction from the Pattern Jury Instructions, standard instruction that's given, Your Honor. We think it is important in light of defense argument.

THE COURT: I think by my not including in the necessary elements motive by inference the jury will get to know what it needs to know, which is you don't need to prove it.

The application is denied.

Thank you all.

You have all done a wonderful job. It has been a pleasure to preside.

Have a good weekend.

MR. GOTTLIEB: Thank you, Judge.

MS. CARVLIN: Thank you.

(Recess taken until Monday, April 30, 2012, at 9:30.)

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